THE PRACTICE

OF

THE COURT FOR RELIEF

OF

Insolvent Debtors.

THIRD EDITION.

BY JAMES NICHOLLS, GENT.

Attorney of the said Court,

AND SOLICITOR TO THE SOCIETY FOR THE DISCHARGE AND RELIEF OF PERSONS IMPRISONED FOR SMALL DEBTS, THROUGHOUT ENGLAND AND WALES.

"Pecuniæ creditæ, bona debitoris, non
Corpus obnoxium esse."

Liv. lib. viii. *cap.* 28.

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TO

HENRY REVELL REYNOLDS, *Esq.* (*Chief Commissioner,*)

JOHN GREATHED HARRIS, *Esq.* THO^{s} BARTON BOWEN, *Esq.*

AND

WILLIAM JOHN LAW, *Esq.*

His Majesty's Commissioners

OF

THE COURT

FOR

The Relief of Insolvent Debtors in England,

THE

FOLLOWING PAGES

ARE

MOST RESPECTFULLY

DEDICATED;

BY THEIR OBEDIENT

AND VERY HUMBLE SERVANT,

THE AUTHOR.

ADVERTISEMENT.

THE following pages contain the act of the 7 Geo. 4, amending and consolidating the laws for Relief of Insolvent Debtors; also forms and instructions on behalf of assignees, creditors, and insolvents.

A copious Index to the present act, the 7 Geo. 4, also an Index to the general matter, will be found at the end of the book. I did not think it desirable to add to these indexes, an index of the expired acts of the 1 Geo. 4, and the amendments thereof.

Several Gentlemen having declared, when an officer is appointed to grant summonses in the same manner as the judges' clerks, they will avail themselves of the mode of pro-

ceeding by summons in preference to motion on trivial subjects; and as in several instances, the act requires only one Commissioner's consent or approbation, and the 4th section authorises one Commissioner to hear certain matters out of Court on summons, it may be assumed the legislature intended the business to be transacted at the least possible expense, I have ventured to recommend proceeding by summons in ordinary cases. The number of applications disposed of by the judges at chambers, induce me to think, the time of the Court, and of the Commissioners thereof individually, will be materially saved by the more general adoption of the practice by summons: at least the saving to the suitors will be commensurate to the decrease of affidavits and briefs.

13, *Stamford Street,*
7th May, 1827.

Anno Primo Georgii IV. Regis.

CAP. CXIX.

An Act for the Relief of Insolvent Debtors in England; *to continue in force until the First Day of* June *one thousand eight hundred and twenty-five.*

[26th July 1820.]

WHEREAS notwithstanding the acts which have from time to time passed for the relief of insolvent debtors, and the discharge of many prisoners for small debts by charitable donations, great numbers of persons generally remain confined for debt in different prisons in *England;* and it is therefore expedient to make a permanent provision for the relief of insolvent debtors, in *England,* under certain restrictions: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this act it shall be lawful for His Majesty to appoint a chief and two other Commissioners, being barristers at law of ten years standing at the least, to be His Majesty's Commissioners for the relief of insolvent debtors, and to preside in a Court to be called *The Court for Relief of Insolvent Debtors;* which shall be a Court of Record for the purposes of this act; and that when and as soon as the said respective appointments shall have been notified in the *London Gazette,* such Court shall be deemed to be fully constituted and established; and that such Court shall have power to appoint a chief clerk, a provisional assignee, a receiver,

Three Barristers to be appointed Commissioners.

Court to be a Court of Record.

Appointment of Officers.

and such other officers as the Lord Chancellor, and the Chief Justices of the Courts of King's Bench and Common Pleas, and the Lord Chief Baron of the Exchequer, shall judge to be necessary, and in such manner as they shall direct; and that the said

Power of the Court

Court, or any of the Commissioners acting under the powers of this act, may adjourn any meeting under this act as often as the said Court or Commissioners shall think necessary, and may administer oaths and examine all parties and witnesses upon oath for the purposes of this act, and shall have such like and the same powers of compelling the attendance of witnesses, and of requiring and compelling the production of books, papers, and writings, as now are possessed by any of the superior Courts at *Westminster*, and to order any prisoner who shall have petitioned for relief under this act, or any prisoner who shall be a necessary and material witness in any matter pending in the said Court, or before any commissioner thereof, to be brought before the said Court or such commissioner as often as the said Court or such commissioner shall think fit; and that the said Court shall also have the power of committing all persons guilty of any contempt to the said Court, to the prison of the King's Bench, or to the common gaol of any county in which such person shall be, and the power of fining in a summary way, or removing any of the officers of the said Court who shall be guilty of any negligence, wilful or unnecessary delay, or other misconduct whatsoever: Provided

Court not to award costs but in certain cases.

always, that the said Court shall not have the power of awarding costs against any person or persons whomsoever, except in such cases only where such costs are herein-after expressly mentioned and permitted to be awarded by this act: Provided always, that nothing

Witnesses shall not be com-

herein contained shall extend to the compelling the

attendance of any witness, unless the party on whose behalf such witness shall be required to attend shall have previously tendered to such witness such allowance for expenses for his attendance as in the judgment of the said Court or of a commissioner shall appear to be reasonable.

pelled to attend, unless expenses are previously tendered.

II. And be it further enacted, That the said Court shall sit for the dispatch of business twice in every week throughout the year, and one at least of the said commissioners shall attend for such purpose.

Sittings of the Court twice a week.

III. And be it further enacted, That no fee or gratuity shall be received or taken by the said Court, or any officer thereof, of or from any person whomsoever, on any pretence whatsoever, except such as shall at any time be specified in a list thereof, to be signed by the commissioners of the said Court, a copy of which list shall always be exposed to view in the office of the said Court.

No fees to be taken except such as shall be established.

IV. Provided always, and be it further enacted, That when and as soon as the said Court shall be fully constituted and established, it shall be lawful for any person in that part of the United Kingdom called *England*, who shall be in actual custody upon any process whatsoever, for or by reason of any debt, damage, costs, sum or sums of money, or for or by reason of any contempt of any Court whatsoever for non-payment of any sum or sums of money, or of costs, taxed or untaxed, either ordered to be paid or to the payment of which such persons would be liable in purging such contempt, or in any manner in consequence of or by reason of such contempt, at any time within the space of fourteen days next after such Court shall have been so fully constituted and established, or within the space of fourteen days next after the commencement of such actual custody, or within such further time as

Persons in custody for debt, &c. may apply by petition in a summary way for discharge.

the said Court shall think reasonable, to apply by petition in a summary way to the Court to be established by virtue of this act, for his or her discharge from such confinement, according to the provisions of this act; and in such petition shall be stated the place wherein such prisoner shall be then confined, the time when such prisoner was first charged in custody, together with the name or names of the person or persons at whose suit or prosecution he or she shall, at the time of presenting such petition, be detained in custody, and the amount of the debts and sums of money, and also of such costs as aforesaid, so far as the amount of such costs is ascertained, for which such prisoner shall be so detained; and shall pray to be discharged from custody, and to have future liberty of his or her person against the demands for which such prisoner shall be then in custody, and against the demands of all other persons who shall be or claim to be creditors of such prisoner at the time of presenting such petition; which petition shall be subscribed by the said prisoner, and shall forthwith be filed in the said Court; and such prisoner shall at the time of subscribing such petition duly execute a conveyance and assignment, in such manner and form as the said Court shall direct, of all the estate, right, title, interest, and trust of such prisoner to all the real and personal estate and effects of every such prisoner, except to the wearing apparel, bedding, and other such necessaries of such prisoner and his or her family not exceeding in the whole the value of twenty pounds, so as to vest all such real and personal estate and effects in the provisional assignee of the said Court, subject to a proviso that in case such prisoner shall not obtain his discharge by virtue of this act, such conveyance and assignment shall, from and after the dismission of the petition of such prisoner praying for his discharge, be null and void, to all intents and purposes.

Petition to state debts and other particulars.

Petition to be filed.

Prisoner to make an assignment of his estate, &c. except wearing apparel, &c. not exceeding the value of 20*l*.

V. Provided always, and be it further enacted, That the said Court shall and may order and direct such provisional assignee, or such assignee or assignees as are herein-after mentioned, to pay out of the said estate and effects before mentioned, to the said prisoner, such allowance for his or her support and maintenance during such prisoner's confinement in actual custody as to the said Court shall seem reasonable and fit.

Court may order an allowance for support of prisoner during confinement.

VI. Provided always, and be it further enacted, That such prisoner shall, within the space of fourteen days next after such petition shall have been filed, or within such further time as the said Court shall think reasonable, deliver into the said Court a schedule, containing a full and true description of all and every person and persons to whom such prisoner shall be then indebted, or who to his or her knowledge or belief shall claim to be his or her creditors, together with the nature and amount of such debts and claims respectively, distinguishing such as shall be admitted from such as shall be disputed by such prisoner, and also a full, true, and perfect account of all the estates and effects, real and personal, in possession, reversion, remainder, or expectancy; and also of all places of benefit or advantage, whether the emoluments of the same arise from fixed salaries or from fees; and also of all pensions or allowances of the said prisoner in possession or reversion, or held by any other person or persons for or on behalf of the said prisoner, or of and from which the said prisoner derives or may derive any manner of benefit or advantage; and also all rights and powers of every nature and kind whatsoever, which such prisoner, or any other person or persons in trust for such prisoner, or for his or her use, benefit, or advantage in any manner whatsoever, shall be seised or possessed of, or interested in, or entitled

When Petition is filed, prisoner to deliver in a schedule of debts, property, &c.

unto, or which such prisoner, or any person or persons in trust for him or her, or for his or her benefit, shall have any power to dispose of, charge or exercise for the benefit or advantage of such prisoner at the time of presenting such petition; together with a full, true, and perfect account of all debts at such time owing to such prisoner, or to any person or persons in trust for him or her, or for his or her benefit or advantage, either solely, or jointly with any other person or persons; and the names and places of abode of the several persons from whom such debts shall be due or owing, and of the witnesses who can prove such debts, so far as such prisoner can set forth the same; and such schedule shall also fully and truly describe the wearing apparel and bedding of such prisoner, and his or her family, and the working tools and implements, and other such necessaries, not exceeding in the whole the sum of twenty pounds, which may be excepted by such prisoner from the operation of this act, together with the values of such excepted articles respectively; and the said schedule shall be subscribed by such prisoner, and shall forthwith be filed in the said Court.

Court may appoint assignees.

VII. And be it further enacted, That when the said Court shall adjudge any prisoner to be entitled to his discharge, such Court shall appoint a proper person or proper persons to be assignee or assignees of the estate and effects of such prisoner for the purposes of this act; and when such assignee or assignees shall have signified to the said Court their acceptance of the said appointment, every such prisoner's estate, effects, rights, and powers, vested in such provisional assignee as aforesaid, shall immediately be assigned by such provisional assignee to such assignee or assignees, in trust for the benefit of such assignee or assignees and the rest of the creditors of every such prisoner, in re-

Their acceptance to be signified to the Court.

spect of or in proportion to their respective debts, according to the provisions of this act; and in case any prisoner who shall be discharged by virtue of this act shall be entitled to any copyhold or customary estate, the assignment to such assignee or assignees as aforesaid shall be entered on the court rolls of the manor of which such copyhold or customary estate shall be holden; and thereupon it shall be lawful for the assignee or assignees of the estate and effects of such prisoner, to surrender or convey such copyhold or customary estate to any purchaser or purchasers of any such copyhold or customary estate from such assignee or assignees, as the said Court shall direct, and the rents and profits thereof shall be in the meantime received by such assignee or assignees, for the benefit of the creditors of such prisoner, without prejudice nevertheless to the lord or lords of the manor of which any such copyhold or customary estate shall be holden; and such assignee or assignees is and are hereby fully empowered to sue from time to time, as there may be occasion, in his, her, or their own name or names, for the recovery, obtaining, and enforcing any estate, effects, or rights of any such prisoner; and also to execute any trust or power vested in or created for the use or benefit of any such prisoner, but in trust for the benefit of such assignee or assignees and the rest of the creditors of every such prisoner, according to the provisions of this act, and to give such discharge and discharges to any person or persons who shall respectively be indebted to such prisoner, as may be requisite; and every such assignment as aforesaid, whether to a provisional or other assignee or assignees, shall be entered on the proceedings of the said Court, and an office copy of every such assignment shall be sufficient evidence thereof in all courts, and to all intents and

Copyhold or customary estates to be assigned.

Sale of estate and effects of the prisoner to be immediately made.

purposes; and every such assignee or assignees shall, with all convenient speed, after his, her, or their accepting such assignment as aforesaid, use his, or her, or their best endeavours to receive and get in the estate and effects of every such prisoner, and shall, with all convenient speed, make sale of all the estate and effects of such prisoner vested in such assignee or assignees; and if such prisoner shall be interested in or entitled to any real estate, either in possession, reversion, or expectancy, the same, within the space of two months after such assignment and conveyance, or within such other time as the said Court shall direct, shall be sold by public auction, in such manner, and at such place or places, as the major part of the creditors of such prisoner entitled to the benefit thereof, who shall assemble together on any notice in writing published in the *London Gazette*, and in some daily paper printed and published in *London*, or within the bills of mortality, if the prisoner before his or her going to prison resided in *London* or within the bills of mortality, and if such prisoner resided elsewhere, then in some printed newspaper which shall be published and generally circulated in or near the county, riding, division, city, town, liberty, or place in which such prisoner resided before he or she was committed to prison, thirty days before any such sale shall be made, shall, under his, her, or their hand or hands, approve; and every such assignee or assignees, at the end of three months at the farthest from the time of his, her, or their accepting any such assignment or conveyance as aforesaid, and so from time to time as occasion shall require, shall make up an account of such prisoner's estate, and make oath in writing, before an officer of the said Court to be appointed for that purpose, or before one or more justice or justices

Creditors to meet 30 days before sale.

At the end of three months dividends to be made;

of the peace of the county, riding, division, city, town, liberty, or place in which such assignee or assignees shall reside, that such account contains a fair and just account of the estate and effects of every such prisoner got in by or for such assignee or assignees, and of all payments made in respect thereof, and that all payments in every such account charged were truly and *bonâ fide* made and paid, which account so sworn shall be filed with the proper officer of the said Court; and if it shall appear that such assignee or assignees has in his or their hands any balance wherewith a dividend may be made amongst the creditors of such prisoner, whose debts are expressed in the schedule delivered by such prisoner, such assignee or assignees shall forthwith declare the amount of the balance in his hands, wherewith such dividend may be made; and notice of the making of every such dividend shall be published, in like manner as a meeting of creditors is herein-before directed to be published, thirty days at least before such dividend shall be made; and every creditor whose debts shall be stated admitted in the prisoner's schedule shall be allowed to receive a share of such dividend, unless such prisoner, or his or her assignee or assignees, or any other creditor of such prisoner, shall object to any such debt, in which case the same shall be examined into by the said Court, who shall have full power for that purpose to require and compel the production of all books, papers, and writings which may be necessary to be produced, as well by the person or persons claiming such debt, as by the prisoner against whom the same shall be claimed, or his or her assignee or assignees, and to examine all such persons and their witnesses on oath, as the nature of the case may require, and to take all other measures necessary for the due investigation of such claim; and the decision

Notice of which shall be given.

Debt to be proved.

of the said Court upon such claim shall be conclusive with respect to any dividend of the effects of such prisoner, under the provisions of this act.

Court to give directions as to the disposal of property in the cases herein mentioned.

VIII. And whereas prisoners discharged by virtue of this act may be entitled to annuities for their own lives, or other uncertain interests, or to reversionary or contingent interests, or to property under such circumstances that the immediate sale thereof, for payment of their debts, may be very prejudicial to them, and deprive them of the means of subsistence which they might otherwise have after payment of their debts; and it may be proper in some cases to authorize the raising of money by way of mortgage, for payment of the debts or part of the debts of a prisoner discharged by virtue of this act, and defraying the expenses attending the execution of this act, instead of selling the property of such prisoner for such purposes; be it enacted, That in all such cases it shall be lawful for the said Court to take into consideration all circumstances affecting the property of any prisoner who shall be discharged by virtue of this act, either at the time of the discharge of such prisoner or at any subsequent time; and if it shall appear to the said Court, that it would be reasonable to make any special order touching the same, it shall be lawful for the said Court so to do, and to direct that such property as it may be expedient not to sell, or not to sell immediately, according to the provisions of this act, shall not be so sold; and from time to time to order and direct in what manner such property shall be managed for the benefit of the creditors of such prisoner, until the same can be properly sold, or until payment of all such creditors according to the provisions of this act, and to make such order touching the sale or disposition of such property as to the said Court shall seem reasonable, considering the

rights of the creditors of such prisoner to payment of their demands, and the future benefit of such prisoner after payment of his or her debts, and upon such terms and conditions with respect to the allowance of interest on debts not bearing interest, or other circumstances, as to the said Court shall seem just; and if it shall appear to the said Court that the debts of such prisoner can be discharged by means of money raised by way of mortgage on any property of such prisoner, instead of raising the same by sale, it shall be lawful for the said Court so to order, and to give all necessary directions for such purpose, and generally to direct all things which may be proper for the discharge of the debts of such prisoner, in such manner as may be most consistent with the interests of such prisoner in any surplus of his or her effects after payment of such debts.

Property may be mortgaged if more beneficial.

IX. And be it further enacted, That in case such prisoner, or any of his or her creditors, or the said Court, shall at any time be dissatisfied with the account of any assignee or assignees, so rendered upon oath as aforesaid; or in case any such assignee or assignees shall neglect to render such account, or shall neglect to dispose of the property, or collect the effects of such prisoner, or shall in any manner waste or mismanage the estate or effects of such prisoner, or neglect to make a due distribution thereof; it shall be lawful for such Court, or of any such creditor as aforesaid, to require such assignee or assignees to render such account, on oath, as is directed by this act, if not before rendered, and to examine any account so rendered, and to inquire into any waste, mismanagement, or neglect of the estate or effects of such prisoner, and direct a proper administration thereof, and ascertain the produce of such estate and effects, to be divided

In case prisoner shall be dissatisfied with the assignees account, or if they neglect to do their duty, Court may direct inquiry.

amongst the creditors of such prisoner, and direct the distribution thereof accordingly; and to require and compel the production of all books, papers, and writings necessary for such purposes, and to examine all parties, and their writings, on oath, as the case may require; and to take all such measures as shall be necessary for the compelling and rendering of such account, and the due investigation thereof, and the proper disposition and distribution of the effects of such prisoner, according to this act, and to award costs against any of the parties, as justice shall require; and the decisions of the said Court upon all such matters shall be final and conclusive.

Books to be produced.

Creditor for annuity may receive dividend, &c.

X. Provided always, and be it further enacted, That all and every creditor and creditors of any such prisoner, for any sum and sums of money payable by way of annuity or otherwise, at any future time or times, by virtue of any bond, covenant, or other securities of any nature whatsoever, may be and shall be entitled to be admitted a creditor or creditors, and shall be entitled to receive a dividend or dividends of the estate of such prisoner, in such manner and upon such terms and conditions as such creditor or creditors would have been entitled unto by the laws now in force if such prisoner had become bankrupt; the amount upon which such dividend shall be calculated, and the terms and conditions on which the same shall be received, being first settled by the said Court; and without prejudice in future to their respective securities, otherwise than as the same would have been affected by a proof made in respect thereof by a creditor under a commission of bankrupt, and a certificate obtained by the bankrupt under such commission.

XI. Provided, and be it also enacted, That no suit in law be proceeded in further than an arrest on mesne process, or suit in equity be commenced by any assignee or assignees of any such prisoner's estate and effects, without the consent of the major part in value of the creditors of such prisoner, who shall meet together pursuant to a notice to be given, at least fourteen days before such meeting, in the *London Gazette*, or other newspaper which shall be published in the neighbourhood of the last residence of such prisoner, for that purpose, and without the approbation of one of the commissioners of the said Court.

Suit not to be commenced without consent of majority of creditors.

XII. And whereas many persons who may claim the benefit, or be brought within the operation of this act, are seised and possessed of lands, tenements, and hereditaments, to hold for the term of their natural lives, with power of granting leases and taking fines, reserving small rents on such estate, for one, two, or three lives, in possession or reversion, or for some number of years determinable upon lives, or have powers over such real or personal estate which such prisoners could execute for their own advantage, and which said powers ought to be executed for the benefit of the creditors of such prisoners; be it therefore enacted, That in every such case all and every the powers of leasing such lands, tenements, and hereditaments, and all other such powers as aforesaid over such real or personal estates, which are or shall be vested in any such prisoner as aforesaid, shall and are hereby vested in the assignee or assignees of the real and personal estate of such prisoner, by virtue of this act, so far as the prisoner could by law vest such power in any person to whom he might lawfully have conveyed such property, to be by such assignee

Where persons claiming the benefit of act are seised of lands, and have power to lease, like power extended to assignee.

or assignees executed for the benefit of all and every the creditors of such prisoner as aforesaid.

Assignees, after giving notice in Gazette, &c. may make composition for debts owing to prisoner.

XIII. And be it further enacted, That it shall and may be lawful at all times hereafter for any assignee or assignees of the estate or effects of any prisoner, by and with the consent of the major part in value of the creditors of such prisoner, who shall be present at a meeting to be had on fourteen days' notice previously given for the purpose hereafter mentioned in the *London Gazette*, if the prisoner was in custody in *London* or within the weekly bills of mortality, and if not, then also in some newspaper which shall be published in the county, city, or place in or near which such prisoner shall have been in such actual custody, and with the approbation of one of the commissioners of the said Court, to make compositions with any debtors or accountants to such prisoner, where the same shall appear necessary or reasonable, and to take such reasonable part of any such debts as can upon such composition be gotten in full discharge of such debts and accounts; and to submit to arbitration any difference or dispute between such assignee or assignees, and any person or persons, for or on account or by reason of any matter, cause, or thing relating to the estate and effects of such prisoner; and every such assignee or assignees is and are hereby indemnified for what they shall fairly do in the premises in pursuance of this act.

Court may appoint new assignees in case of death or removal.

XIV. And be it further enacted, That in case any assignee so appointed shall be unwilling to act, or in case of the death or incapacity or misconduct of any such assignee, it shall be lawful to and for any creditor of such prisoner to apply to the said Court to appoint a new assignee or assignees, with like powers and authorities as are given by this act to the original

assignee or assignees; and the said Court shall have power to remove such assignees, and to appoint such new assignee or assignees, and to oblige any assignee who shall be removed, and the heirs, executors, administrators, and assigns of any deceased assignee, to account for and deliver up all such estate and effects, books, papers, writings, deeds, and all other evidences relating thereto, as shall remain in his or her hands, to be applied for the purposes of this act, and the decision of the said Court thereupon shall be final and conclusive; and from and immediately after such appointment, all the estate, effects, rights, and powers of the said prisoner, vested either in the provisional assignee or such assignee or assignees as aforesaid, shall become and the same are hereby vested in such new assignee or assignees.

When assignees shall not deliver over balance of property, Court may order them to be arrested, &c.

XV. And be it further enacted, That in case any such assignee or assignees, or the heirs, executors, or administrators of any deceased assignee or assignees, shall not deliver over any part of such estate or effects, or pay the balance of the produce of any such estate or effects found to be in the hands of such assignee or assignees, or of such heirs, executors, or administrators as aforesaid, according to the tenor of this act, it shall be lawful for the Court to be established by virtue of this act to order the person or persons so offending to be arrested and committed to the county gaol nearest to the place where they shall reside, there to remain, without bail or mainprize, until such person or persons shall have fulfilled the duty required by this act, or until this Court shall make other order to the contrary.

Court to give notice in the London Gazette, &c. to Creditors after petition and

XVI. And be it further enacted, That the said Court shall forthwith, after such petition and schedule shall have been respectively filed in the said Court, cause no-

schedule shall have been filed.

tice thereof to be given to the creditor or creditors at whose suit such prisoner shall be detained, or the attorney or agent of such creditor or creditors, and to the other creditors named in the schedule of such prisoner, or such of them as the said Court shall think fit, and to be inserted in the *London Gazette*, and also, if the said Court shall think necessary, in some other newspaper or newspapers, and shall appoint a day and place for the hearing of the matter of such petition; and in case such notice as the said Court shall direct shall have been given by any creditor, of his or her intention to oppose such prisoner's discharge, it shall and may be lawful both for the said creditor, and any other of the creditors of the said prisoner, to oppose such prisoner's discharge, and for that purpose to put such questions to such prisoner and examine such witnesses as the said Court shall think fit, touching the matters contained in such petition and schedule, and touching such other matters as the said Court shall be of opinion that it may be fit and proper to inquire into, in order to the due execution of this act, but no creditor shall examine or oppose the discharge of such prisoner, until he shall make oath or affidavit of his debt, or otherwise satisfy the Court of his right to oppose such prisoner's discharge, if required so to do by such prisoner: Provided always, that at such hearing, any creditor or creditors so opposing may require, or the Court may, if it shall deem it necessary, order that it shall be referred to an officer of the said Court, to investigate the accounts of the said prisoner, and to examine into the truth of the schedule of such prisoner, and to report thereon to the said Court; and the said Court may at such hearing proceed on the other matters in opposition to the discharge of such prisoner, or adjourn the said hearing thereof until such officer shall have so made

Creditors may oppose prisoner's discharge, &c.

Accounts of prisoner may be referred to an officer of the Court.

If Court satisfied with schedule, prisoner to be discharged forthwith; or so soon as he

his report; and in case such prisoner shall not be opposed, and the Court shall be satisfied with the said schedule, and that such prisoner is entitled to the benefit of this act, then and in such case such Court shall so declare, and shall order such prisoner to be discharged from custody forthwith, or so soon as such prisoner shall have been in custody at the suit of one or more of the persons who were creditors at the time of petitioning, or who have since become creditors in respect of debts then growing due, for such period or periods, not exceeding six months in the whole, as the said Court shall direct, to be computed from the time of filing the petition of such prisoner, and shall in such order specify the several debts of the said prisoner to which such charge * shall apply; and such discharge shall extend to all process issuing from any Court for any contempt of any Court, ecclesiastical or civil, by non-payment of money, or of costs or expenses in any cause or proceeding in any Court, ecclesiastical or civil; and in case it shall appear to such Court, that the opposition to the petition of such prisoner, by any of such creditors, is frivolous and vexatious, that then it shall and may be lawful for such Court to award such costs to such prisoner as shall appear unto the Court to be just and reasonable.

shall have been in custody six months.

XVII. And be it further enacted, That in case it shall appear to the said Court, that such prisoner shall, with intent to conceal the state of his affairs, or to defeat the objects of this act, have destroyed or otherwise wilfully prevented or purposely withheld the production of any books, papers, or writings, relating to such of his affairs as are subject to investigation under this act; or shall have kept or caused to be kept false books, or made false entries, or have wilfully and

When it shall appear to the Court that such prisoner shall have destroyed books or acted fraudulently, &c. term of imprisonmen may be extended to three years.

* Discharge is no doubt meant

fraudulently altered or falsified any such books, papers, or writings; or shall in any respect have been guilty of fraud, in discharging or concealing any debt due to or from the said prisoner; or shall have fraudulently made away with, charged, mortgaged, or concealed any part of his or her property of what kind soever, either before or after the commencement of his or her said imprisonment, for the purpose of diminishing the sum to be divided among his or her creditors, or of giving an undue preference to any of the said creditors; then it shall and may be lawful for the said Court to order that such prisoner shall not be discharged out of custody by virtue of this act, or receive or be entitled to any protection under the same, until he shall have been in custody at the suit of some one or more of the persons who were creditors at the time of his petitioning the said Court, or had since become creditors in respect of debts then growing due, and from whose claims he shall be discharged by the judgment of the said Court, for such period or periods, not exceeding three years in the whole, as the said Court shall direct, to be computed from the filing of such prisoner's petition to the said Court.

When prisoners shall have contracted debts fraudulently, &c. or put their creditors to any unnecessary expense, the Court may extend time of imprisonment to two years.

XVIII. And be it further enacted, That in case it shall appear to the said Court that any such prisoner shall have contracted any of his debts fraudulently, or by means of false pretences, or without having had any reasonable or probable expectation at the time when contracted of paying the same, or shall be indebted for damages recovered in any action for criminal conversation, or for seducing the daughter of the plaintiff in such action, or in any action for a malicious prosecution, or for any other malicious injury, or shall have put any of his or her creditors to any unnecessary expense, by any vexatious or frivolous de-

fence to any suit for recovering the same, it shall and may be lawful for such Court to order that such prisoner shall not be discharged out of custody by virtue of this act, or be entitled to any benefit or protection under the same, as to any debt so contracted, or as to any damages so incurred, or as to any debt for recovering of which he shall so have occasioned unnecessary expense as aforesaid, until he shall have been in custody at the suit of the creditor or creditors whose debts shall have been so contracted or damages so incurred, or who shall have been so put to expense, for such period or periods, not exceeding two years in the whole, as the said Court shall direct, to be computed as aforesaid.

Court may order creditors to pay prisoners any sum not exceeding 4s. per week.

XIX. Provided always, and be it enacted, That in all cases where such prisoner shall not be ordered to be discharged forthwith, but to be liable to imprisonment at the suit of his creditor or creditors, or of any or either of them, it shall be lawful for the said Court, on the application of such prisoner, to order the creditor or creditors at whose suit such prisoner shall be imprisoned, to pay to such prisoner such sum or sums of money, not exceeding the rate of four shillings by the week in the whole, at such times and in such manner as the said Court shall direct; and that on failure of payment thereof as directed by the said Court, such prisoner shall be forthwith discharged from custody at the suit of the creditor or creditors so failing to pay the same.

Justices of the peace to appoint in their districts examiners, &c.

XX. And be it further enacted, That the justices of the peace for every county, riding, city, cinque port, ancient town or members, division, liberty, or place, assembled at the general quarter sessions or general sessions of the peace, or at any adjournment thereof, and from time to time afterwards as occasion may require, shall and may in open court appoint as many fit

persons as they shall judge sufficient, to be examiners for the purposes of this act, within their respective jurisdiction.

The Court may direct final examinations to be taken at quarter sessions.

XXI. And be it further enacted, That the Court established by virtue of this act shall and may in all cases, as they shall think fit, order and direct that any prisoner, instead of being brought before such Court for final examination, shall be examined by the justices of the peace in open court, at their general or general quarter sessions of the peace, or at some adjournment thereof, for any county, riding, city, cinque port, ancient town or member, division, liberty, or place, who are hereby respectively empowered and required to take such examination pursuant to such order; and the said Court shall forthwith cause twenty-one days' notice to be given in the *London Gazette*, and in such one or more newspapers as the said Court shall direct, of the day on which, and the place where, the said prisoner shall be brought before the said justices for his examination; and such prisoner shall, according to such order, be carried before such justices, for which such order shall be a sufficient warrant; and in case any one creditor shall give two days' notice to such prisoner of his or her intention to oppose such prisoner's discharge, then it shall and may be lawful for such creditor, or for any other creditor to oppose such prisoner's discharge, and to put to such prisoner all such questions as to such justices shall appear relevant and proper, and such prisoner shall answer, upon oath, all such questions; and if it shall appear to such justices to be expedient and proper that the accounts of such prisoner, and the matters of the schedule of such prisoner, should be further investigated and examined, then it shall be lawful for such justices to adjourn the hearing of the petition of such prisoner to some subsequent general or quarter or ad-

Notice to be given in the London Gazette, &c.

Prisoner's discharge may be opposed.

Schedule may be further investigated.

journed sessions, and at the request of any one or more creditors to order and direct that some one of the examiners appointed by the said justices by virtue of this act shall examine into the matters of the said schedule, and certify his opinion thereon to the said justices at such general or quarter or adjourned sessions to which the hearing of such petition shall have been adjourned, and of which adjournment all parties interested shall take notice; and that such examiner shall and may receive for his trouble the sum of one pound and no more for every meeting under such order, to be paid for by the person or persons requiring the same; and in case it shall appear to the said justices upon such examination, or by evidence, that such prisoner is entitled to the benefit of this act, then the said justices shall so declare and adjudge, and shall certify the same to the Court to be established by virtue of this act; and in case it shall appear to the said justices by such examination, or by evidence, that such prisoner shall have contracted any debts, against which he shall seek to be discharged, fraudulently, or without any reasonable or probable expectation, at the time of contracting the same, of being able to pay the same, or shall, with intent to conceal the state of his affairs, or to defeat the objects of this act, have destroyed or otherwise wilfully prevented the production of any books, papers, or writings, relating to such of his affairs as are subject to investigation under this act, or shall have kept, or cause* to be kept, false books or made false entries, or have wilfully and fraudulently altered or falsified any such books, papers, or writings, or shall in any respect have been guilty of fraud, in contracting, discharging, or concealing any debt due from the said prisoner to any of

Examiner to receive 1 *l.* for every meeting.

Justices to certify to the Court if prisoner is entitled to discharge; but if prisoner shall have acted fraudulently, &c. justices shall adjudge accordingly.

* So in the Act.

his or her creditors, or shall have fraudulently made away with, charged, mortgaged, or concealed any part of his or her property, of what kind soever, either before or after the commencement of his or her said imprisonment, for the purpose of diminishing the sum to be divided among his or her creditors, or of giving an undue preference to any of the said creditors, or that such prisoner shall have put any of such creditors as shall have proved their debts to unnecessary expense, by any vexatious or frivolous defence, or improper delay in any suit for recovering the same, or that such prisoner shall have wilfully or fraudulently omitted any effects or property whatsoever, to the value of not less than twenty pounds in the whole, in the schedule which the said prisoner shall first have delivered in to the said Court, then such justices shall so declare and adjudge, and shall also declare and adjudge in like manner, and subject to the same limitations as are herein-before mentioned and imposed in such cases upon the Court, to be established by virtue of this act, for what period of time such prisoner shall remain in actual custody before such prisoner shall be discharged from custody by virtue of this act; and such justices shall forthwith certify the same to the Court to be established by virtue of this act; and thereupon such Court shall accordingly order and direct, that the said prisoner shall be discharged from custody when and so soon as he shall have been in such actual custody for the full period of time expressed in such certificate as aforesaid.

After prisoner's committal, affidavits of creditors may be received in opposition to discharge, ex-

XXII. And be it further enacted, That in case any such prisoner, after his commitment to such actual custody as aforesaid, shall be removed by any writ of *Habeas Corpus* or otherwise, from the place of such actual custody, or shall be rendered in discharge of

his bail, it shall and may be lawful for the said Court to receive the affidavits, of any creditor or creditors, or of any other person or persons, in opposition to the discharge of such prisoner under this act; and also, if such Court shall think fit, to permit interrogatories to be filed for the examination or cross-examination of every person making or joining in such affidavit, and also to stay the discharge of every such prisoner until such interrogatories shall be fully answered, to the satisfaction of such Court: Provided always, that this shall not extend to any prisoner who shall have been in such actual custody, or arrested, within the counties of *Middlesex* or *Surrey*, or the city of *London*.

cept in Surrey, Middlesex, or the city of London.

XXIII. And be it further enacted, That such order of the said Court for the discharge of such prisoner shall in all cases be final and conclusive, and shall not be reviewed by the said Court, unless such Court so making the said order shall, after such order made, see good and sufficient cause to believe that such adjudication, and the order founded thereon, shall have been made on false evidence, or otherwise fraudulently obtained; in which case it shall and may be lawful for any creditor of the said prisoner to apply to the said Court to direct the said prisoner to be brought again before them; and it shall and may be lawful for the said Court, upon due notice to be given by such creditor, to rehear the said matter, and make such further order as to them shall seem fit in execution of the powers in this act contained: Provided always, that in case such Court, or such justices of the peace as aforesaid, shall entertain any doubt, touching any matter alleged against such prisoner at the time of his final examination before mentioned, to prevent his or her discharge, or touching the examination of such prisoner,

Order of Court for discharge of prisoner to be final, unless obtained upon false evidence, &c.

Prisoner may be remanded, and afterwards brought up for examination.

it shall be lawful for such Court, or such justices, to remand such prisoner to custody, and afterwards to cause such prisoner to be again brought up for examination, as often as to the said Court or the said justices shall seem fit.

In case of false swearing, prisoner subject to punishment inflicted for perjury.

XXIV. And be it further enacted, That if any prisoner who shall apply for his or her discharge, under the provisions of this act, or any other persons taking an oath under the provisions of this act, shall wilfully forswear and perjure himself or herself in any oath to be taken under this act, and shall be lawfully convicted thereof, he or she so offending shall suffer such punishment as by law may be inflicted on persons convicted of wilful and corrupt perjury.

When order for discharge of prisoner is made, Court may order that judgment shall be entered up against the prisoner in one of the superior courts, &c.

XXV. And be it further enacted, That when any order for the discharge of any prisoner shall be made, the said Court may also order that a judgment shall be entered up against such prisoner in some one of the superior courts of *Westminster*, in the name of the assignee or assignees of such prisoner, or of such provisional assignee as aforesaid, if no other assignee shall then have been appointed and shall have accepted such office, for the amount of the debts of such prisoner which shall at the time of such order remain due and unpaid to the said creditors, and from which such prisoner shall be discharged by such order; and the said prisoner shall execute a warrant of attorney to authorize the entering up such judgment; and such judgment shall have the force of a recognizance; and such order of the Court to be established by virtue of this act, shall be a sufficient authority to the proper officer for entering up such judgment; and when it shall appear to the satisfaction of the said Court that such prisoner is of ability to pay such debts, or any part thereof, or that he is dead, leaving assets for that

Court may permit execution to be taken out on such judgment where there

purpose, the Court may permit execution to be taken out upon such judgment, or put in force any other power given by this act against the property acquired by such prisoner after his discharge, for such sum of money as under all the circumstances of such prisoner the Court shall order; such sum to be distributed rateably amongst the creditors; and such further proceeding shall and may be had, according to the discretion of the said Court, from time to time, until the whole of the debts due to the several persons against whom such discharge shall have been obtained shall be fully paid and satisfied, together with such costs as such Court shall think fit to award; and no *scire facias* shall be necessary to revive such judgment on account of any lapse of time, but execution shall at all times issue thereon by virtue of the order of the said Court: Provided always, that in case any such application against such prisoner shall appear to the Court to be ill founded and vexatious, it shall be lawful for the Court not only to refuse to make any order on such application, but also to dismiss the same with such costs as to the Court shall appear reasonable.

are assets, and the prisoner of ability to pay.

No scire facias necessary.

XXVI. And be it further enacted, That no prisoner who shall have obtained his or her discharge by virtue of this act, shall at any time after such discharge be imprisoned by reason of the judgment so as aforesaid entered up against him in the name of such assignee or assignees as aforesaid, or of any judgment or decree or order obtained for payment of money only, or for debt, damages, contempt of any court, ecclesiastical or civil, by non-payment of money or costs contracted, incurred, occasioned, owing, or growing due at the time of the commencement of such actual custody, and expressed in such discharge, or shall be in prison for any costs, taxed or untaxed, to the payment of

Prisoner after judgment is entered up, not to be subject to imprisonment by reason of the same.

which he may be then liable in consequence of or by reason of any contempt, or in order to the purging the same; but that upon every arrest or detainer in prison upon any such judgment or decree or order, or for or on account of any such debt, damage, contempt, costs, sum and sums of money, it shall and may be lawful for any judge of the Court from which any such process shall have issued, upon shewing to such judge a copy of the order for such discharge as aforesaid, attested by the proper officer of the said Court, to release from custody such prisoner as aforesaid, and at the same time, if such judge shall in his discretion think fit, to order the plaintiff in such suit or suits, or any person or persons suing out such process, to pay such prisoner the costs which he or she shall have incurred on such occasion, or so much thereof as to such judge shall seem just and reasonable, such prisoner causing a common appearance to be entered for him or her in the action or suit for any such debt as aforesaid.

In case of an action for escape, this act to be given in evidence.

XXVII. And be it further enacted, That if any action of escape, or any suit or action be brought against any judge, justice of the peace, sheriff, gaoler, keeper of any prison, or any person, for performing the duty of his office in pursuance of this act, such judge, justice, sheriff, gaoler, or keeper, or other person, may plead the general issue, and give this act in evidence; and if the plaintiff be nonsuited, or discontinue his or her action, or verdict shall pass against him or her, or judgment shall be had upon demurrer, the defendant shall have treble costs.

Where prisoner shall be declared entitled to the benefit of the act, no execution shall issue against such prisoner for

XXVIII. And be it further enacted, That after the said Court shall have declared any prisoner to be entitled to the benefit of this act as aforesaid, no writ of *fieri facias* shall issue on any judgment before then obtained against such prisoner, for any debt contracted

or cause of action arising before the time of the commencement of such actual custody as aforesaid, except upon the judgment entered up by order of the Court as aforesaid; and that if any *scire facias*, or action of debt, or any other suit or action, shall be brought against any prisoner, his or her heirs, executors, or administrators, upon any judgment obtained against any such prisoner, or any statute or recognizance acknowledged by him or her, or any other cause of action arising before the commencement of such actual custody by virtue of this act, except upon the judgment entered up against such prisoner under the order of the Court as aforesaid, it shall and may be lawful for any such prisoner, his or her heirs, executors, or administrators, to plead generally, that such prisoner was duly discharged according to this act, by the order by which such discharge shall have been obtained, and that such discharge remains in force, without pleading any other matter specially, whereto the plaintiff or plaintiffs shall or may reply generally, and deny the matters pleaded as aforesaid, or reply any other matter or thing which may shew the defendant or defendants not to be entitled to the benefit of this act, or that such prisoner was not duly discharged according to the provisions of this act, in the same manner as the plaintiff or plaintiffs might have replied, in case the defendant or defendants had pleaded this act and his discharge by virtue of this act specially; and if the plaintiff or plaintiffs be nonsuited, discontinue his or her action, or verdict pass against him, her, or them, or judgment shall be had on demurrer, the defendant or defendants shall have double costs: Provided always, that it shall be lawful to proceed against any prisoner so discharged upon any judgment, recognizance, or other security obtained or

debt contracted prior to his actual confinement.

Prisoner may be proceeded against on that which could not be put in

force at his discharge.

given, and which could not have been put in force against such prisoner at the time of his obtaining such discharge; any thing in this act contained to the contrary notwithstanding.

When prisoner shall, after discharge, become entitled to property which cannot be taken in execution.

XXIX. Provided always, and be it further enacted, That in case any such prisoner shall, after his discharge out of custody as aforesaid, become entitled to or possessed in his or her own right of any stock in the public funds of this country, or of any bills of exchange, promissory notes, bank notes, or other choses in action, or other property which by law cannot be taken in execution under the said judgment so to be entered up in the names of the said assignee or assignees as aforesaid, and such prisoner shall have refused to convey, assign, or transfer such stock, bills of exchange, promissory notes, bank notes, or other choses in action, or other property, or so much of them as may be sufficient to satisfy the said judgment, then and in such cases it shall and may be lawful for the assignee or assignees of such prisoner to apply by petition in a summary way, setting forth the facts of the case, to the Court, and to pray that the said prisoner may be taken and remanded to custody notwithstanding any such discharge; and thereupon, if upon examination by the said Court, and hearing as well the said assignee or assignees as the said prisoner, in case he shall appear, or the said assignee or assignees only, in case such prisoner, due notice having been given to him, shall not appear, it shall appear to the said Court that the contents of such petition are true, then and in such case such Court shall so declare and adjudge, and shall thereupon order the said prisoner to be apprehended and remanded to custody, which shall in such cases always be within the walls of the prison from whence such prisoner shall have been discharged, and

Assignee may apply by petition to the Court for relief.

Court may order prisoner to be apprehended.

not within any rules or liberties thereof, until he shall convey, assign, and transfer such stock, bills of exchange, promissory notes, bank notes, or other choses in action, or other property, or as much thereof as the Court shall direct, towards the satisfaction of such judgment, to such assignee or assignees, for the general benefit of the creditors of such prisoner.

When prisoners, after discharge, become entitled to stock in the public funds, &c. Court to make further order.

XXX. Provided always, and be it further enacted, That in case any person or persons, body politic or corporate, shall, after the discharge of any such prisoner out of custody as aforesaid, become possessed of, or have under his or their power or control, any stock in the public funds of this country, or any legacy, money due or growing due, bills of exchange, promissory notes, bank notes, securities for money, goods and chattels, or any other property whatsoever belonging to such prisoner, or held in trust for him, or for his use and benefit, or to which such prisoner shall be in any way entitled; or in case any such person or persons, body politic or corporate, shall be in any manner indebted to such prisoner, it shall and may be lawful for the said Court, upon the application of any assignee or creditor of such prisoner, to cause notice to be given to such person or persons, body politic or corporate, directing him or them to hold and retain the said property till the said Court shall make such further order concerning the same; and thereupon it shall be lawful for the said Court further to order such person or persons, body politic or corporate, to deliver over such property, and to pay such debts as aforesaid, or any part thereof, to the receiver of the said Court, or to the assignee or assignees of such prisoner, for the general benefit of his creditors entitled to claim under such judgment entered up by order of the said Court as aforesaid.

Court to appoint attornies to practice in it.

XXXI. And be it further enacted, That the said Court to be established by virtue of this act shall and may admit at their discretion any number of fit persons to practise in the said Court as attornies or agents, on behalf of such prisoners in such actual custody as aforesaid, which admissions shall in all cases be made without the payment of any fee or gratuity whatsoever, and shall be filed of record in the said Court; and that in case any person not admitted on the files of the said Court shall practise in the said Court as an attorney or agent, on the behalf of any prisoner in such actual custody as aforesaid, he shall be deemed and taken to be guilty of a contempt of the said Court.

False affirmation punished as perjury.

XXXII. And be it further enacted, That in cases wherein by this act an oath is required, the solemn affirmation of any person being a quaker, shall and may be accepted and taken in lieu thereof; and every person making such affirmation, who shall be convicted of wilful false affirmation, shall incur and suffer such and the same penalties as are inflicted and imposed upon persons convicted of wilful and corrupt perjury.

Persons wilfully omitting any thing in schedule as finally amended, except wearing apparel, &c. not exceeding 20*l*. subject to three years imprisonment.

XXXIII. And be it further enacted, That from and after the passing of this act, in case any prisoner shall, with intent to defraud his creditor or creditors, wilfully and fraudulently omit in his schedule, as finally amended and filed in the said Court, at the time of the order for his discharge from such actual custody as aforesaid, any effects or property whatsoever, or retain or except out of the schedule, as wearing apparel, bedding, working tools and implements, and other necessaries, more in value than twenty pounds, every such person so offending, and any person aiding and assisting him to do the same, shall, upon being thereof con-

victed by due course of law, be adjudged guilty of a misdemeanor, and thereupon it shall and may be lawful for the Court before whom such offender shall have been so tried and convicted, to sentence such offender to be imprisoned and kept to hard labour for any period of time not exceeding three years.

All affidavits used, to be sworn before the Court, &c.

XXXIV. Provided always, and be it further enacted, That all affidavits to be used before the said Court, or any commissioner thereof, or any justices of the peace, at their general or adjourned sessions, or any examiner appointed under this act, shall and may be sworn before the said Court, or any commissioner appointed by the said Court for the purpose of taking affidavits, or any master extraordinary in chancery, or commissioner for taking affidavits in any of the superior courts of *Westminster Hall;* and that no conveyance, assignment, letter of attorney, affidavit, or other proceedings whatsoever before or under any order of the said Court, or before any justices of the peace acting in the execution of this act, shall be liable to the payment of or be chargeable with the payment of any stamp or other duty whatsoever.

No proceeding liable to stamp duty.

Rate of payment for the insertion of advertisements, 3*s.*

XXXV. Provided always, and be it further enacted, That the sum of three shillings, and no more, shall be paid to any printer or proprietor of any newspaper, for the insertion of any advertisement herein-before directed to be inserted in any newspaper, and all printers and proprietors of newspapers are hereby required to insert the same on payment of the said sum of three shillings for the insertion thereof, in such form as the said Court shall from time to time direct; and that no such advertisement shall be liable to the payment of or chargeable or charged with any stamp or other duty whatsoever.

Not liable to stamp duty.

Commissioners powers under the act 53 G. 3. c. 102. extended to this act.

XXXVI. And whereas it is expedient, that the powers given to the Court established by virtue of an act passed in the fifty-third year of His late Majesty's reign, intituled *An Act for the Relief of Insolvent Debtors in* England, and two acts of the fifty-fourth and fifty-sixth years of his said late Majesty's reign, to amend the said act, should be continued and vested in the Court to be established by virtue of this act, in so far as any of the same relate to the persons who have already obtained their discharge by virtue of that act, and their estate and effects; be it further enacted, That the Court to be established by virtue of this act shall and may exercise all such powers, and do all such acts, and make all such orders respecting persons who have already obtained their discharge by virtue of the said recited act, or their estate and effects, or their respective assignee or assignees, or the provisional assignee appointed by the Court established by virtue of the said recited act, as might have been exercised, done, and made by the Court established by virtue of the said recited act, in case the said recited act had been continued by this act.

Former records to be delivered over to officers appointed by this act.

XXXVII. And be it further enacted, That all the records, papers, documents, and money, of and belonging to or received under the authority of the Court established by virtue of the said recited act, shall immediately after the time when the Court to be established by virtue of this act shall have been fully constituted and established as aforesaid, be delivered over to the chief clerk of the said last-mentioned Court, by the officer or officers, or other persons having the custody of the same; and which said records shall be deemed and taken to be the records of the Court to established by virtue of this act.

XXXVIII. Provided always, and be it further enacted, That nothing in this act contained shall extend to entitle the assignee or assignees of the estate and effects of such prisoner, being an officer of the army or navy, or in the naval or military service of the *East India* company, or a beneficed clergyman or curate, to the pay or pension of such officer, or to the income of such benefice or curacy, for the purposes of this act: Provided always nevertheless, that it shall be lawful for such assignee or assignees to apply for and obtain a sequestration of the profit of any such benefice, for the payment of the debts of any such clergyman, and the order for such discharge shall be a sufficient warrant for granting of such sequestration, without any writ or other proceedings to authorize the same, and such sequestration shall accordingly be issued, as the same might have been issued upon any writ of *levare facias*, founded upon any judgment against such clergyman: Provided also, that it shall be lawful for the said Court to order such portion of the pay or half-pay or pension of any such officer of the army or navy, or naval or military service of the *East India* company, as on communication from the said Court to the secretary at war, or the lords commissioners of the Admiralty, or the court of directors of the united *East India* company, he or they may respectively consent to, by writing under the hand of the said secretary at war, or the lords commissioners or secretary of the Admiralty, or the said secretary of the court of directors, to be applied in payment of his debts, and for that purpose to be paid to his assignee or assignees; and such order and consent being lodged in the office of the paymaster of His Majesty's forces, or of the treasurer of the navy,

Assignees power not to extend to the effects of officers of the army or navy, &c. or beneficed clergyman.

Sequestration of the profit of benefice may be applied for.

Portion of pay of officers may be obtained by application.

or the said secretary of the said court of directors, as the case shall require, such paymaster or treasurer or secretary shall give directions accordingly, and such portion of the pay, half-pay, or pension of such officer, as shall be specified in such order and consent, shall be paid to his assignee or assignees, until the said Court shall make order to the contrary.

Justices of Kesteven, &c. may hold their quarter sessions for the purposes of this act in the division of Lindsey.

XXXIX. And be it further enacted, That the justices of the peace acting for the several parts of *Kesteven* and *Holland* in the county of *Lincoln*, shall and may hold their several general quarter sessions or other sessions of the peace for such parts or divisions respectively, by adjournment or otherwise, in the parts or division of *Lindsey*, in the said county of *Lincoln*, for the purposes of this act, and shall and may meet and act therein for such purposes only, and they are hereby empowered to meet and act accordingly.

Act not to extend to crown debtors, unless treasury give consent.

XL. Provided always, and be it further enacted, That this act shall not extend, or be construed to extend, to discharge any prisoner seeking the benefit of this act, with respect to any debt due to His Majesty, or His successors, or to any debt or penalty with which he or she shall stand charged at the suit of the Crown, or of any person for any offence committed against any act or acts of parliament relative to His Majesty's revenues of customs, excise, stamp or salt duties, or any of them, or any branches of the public revenue, or at the suit of any sheriff or other public officer upon any bail bond entered into for the appearance of any person prosecuted for any offence committed against any act or acts of parliament relative to His Majesty's said revenues of customs, excise, stamps, or salt duties, or any other branches of public revenue, unless three of the lords commissioners of

His Majesty's treasury for the time being shall certify under their hands their consent to such discharge.

Prisoners under writ of capias in cases of extents, as herein mentioned, may apply to the barons of Exchequer to be discharged.

XLI. And be it further enacted, That it shall and may be lawful for any person or persons who may now or shall hereafter be imprisoned under or by virtue of any writ of *capias*, in any immediate extent or extents issued and remaining in force at the instance or for the benefit and reimbursement of any surety or sureties, or other person or persons, or the inhabitants of any parish, ward, or place, who shall or may have advanced and paid the debt to the Crown, and by reason whereof the lords commissioners of His Majesty's treasury may not be authorized to give their consent last aforesaid, to apply to the barons of His Majesty's court of Exchequer in *England* or *Scotland*, for his, her, or their discharge, giving one month's previous notice in writing to the surety or sureties, or person or persons aforesaid, or to the churchwardens or overseers of the parish, ward, or place, at whose instance or for whose benefit respectively such extent or extents shall remain in force, of the intention of such person or persons so imprisoned to make such application, and an enumeration and description of all and every the property, debts, and effects whatsoever, of such person or persons, in his, her, or their own possession or power, or in the possession or power of any other person or persons for his, her, or their use; and for the said Court to whom such application shall be made, to order such person or persons to be brought before them, or before any baron of the said Court, to be examined upon oath touching and concerning his, her, or their property and effects; and if such person or persons respectively shall upon such examination make a full dis-

closure of all his, her, or their property and effects, and it shall otherwise appear to the satisfaction of the said Court reasonable and proper that such person or persons should be no longer imprisoned under such writ, for such Court or Baron to order a writ of *supersedeas quoad corpus* to be issued out of the said Court for the liberation of such person or persons from such imprisonment: Provided always, that no such liberation as aforesaid shall be held or deemed to satisfy or supersede such extent or any proceedings thereon, except as to such imprisonment as aforesaid, or the debt or debts seized under and by virtue thereof, and for which such person or persons shall be so imprisoned.

Bankrupts not entitled to discharge under this act, unless in custody for three years.

XLII. Provided also, and be it further enacted, That no prisoner against whom any commission of bankrupt shall have issued and shall remain in force, and who shall not have obtained a certificate of his or her conformity to the several statutes concerning bankrupts under such commission, shall be entitled to be discharged by virtue of this act from any debt for which such prisoner shall be detained in custody, and which might have been proved under such commission, unless such prisoner shall have been so detained in prison for the space of three years before the time when such prisoner shall apply for his or her discharge under this act.

No person having the benefit of an insolvent act shall be entitled to further relief within five years, unless three-fourths in number and

XLIII. Provided always, and be it further enacted, That no person who shall have been at any time discharged by virtue of this act, or of any other act for the relief of insolvent debtors, shall again be entitled to the benefit thereof within the space of five years after such discharge, unless three-fourths in number and value of the creditors against whom such person shall seek

to be discharged by virtue of this act, shall signify his, her, or their assent to such discharge, or it shall be made appear, to the satisfaction of the Court to be established by virtue of this act, that such person has, since his or her former discharge, endeavoured by industry and frugality to pay all just demands upon him or her, and has incurred no unnecessary expense, and that the debts which such person has incurred, subsequent to such former discharge, have been necessarily incurred for the maintenance of such person, or his or her family, or that the insolvency of such person has arisen from misfortune, or from inability to acquire subsistence for himself or herself, and his or her family.

value of the creditors consent.

XLIV. And be it further enacted, That if any person who shall at any time be a prisoner in any such prison as aforesaid, upon any such process as aforesaid, shall be or become of unsound mind, and therefore incapable of taking the benefit of this act in such manner as he or she might have done if of sound mind, the gaoler or keeper of such prison shall forthwith require one or more justice or justices of the peace for the county, riding, division, or place wherein such prison shall be, to attend at the said prison and enquire into the state of mind of such prisoner; and thereupon, and also in case any such justice or justices shall receive information by other means, that any such prisoner is of unsound mind as aforesaid, such justice or justices shall go to the said prison, and by his, her, or their own view, and by examination on oath of such person or persons as he or they shall think fit to examine, shall enquire into the state of mind of such prisoner; and if it shall appear to such justice or justices upon such enquiry, that such prisoner is of unsound mind, and therefore incapable of taking the benefit of this act, in

Mode of proceeding with prisoners of unsound mind.

such a manner as a person of sound mind might do, such justice or justices shall forthwith make a record of the fact, and certify the same to the court to be established by virtue of this act; and thereupon it shall be lawful for such Court, at the instance of any person or persons on behalf of such prisoner, to order notice to be inserted in the *London Gazette*, and in two or more public newspapers usually circulated in the neighbourhood of such prison, and in the neighbourhood of the usual residence of such prisoner before he or she was committed to such prison, as the said Court shall see fit, and shall in such order specify and direct, that application will be made to such Court for the discharge of such prisoner, on a day to be specified in such order, being twenty days at least from the day of publication of such one of such Gazette and newspapers containing such notice as shall be last published; which notice, together with service of the like notice on the creditor or creditors at whose suit such prisoner shall be detained in custody, or his, her, or their attorney or attornies in such suit, shall be deemed sufficient to authorize the said Court to proceed to the discharge of such prisoner, if otherwise entitled to such discharge, according to the true intent and meaning of such act; and such Court shall proceed accordingly, and shall discharge such prisoner, and do all other acts under this act, in case it shall appear that such prisoner might have obtained his or her discharge under this act if of sound mind.

Officer of the Court to produce schedules and proceedings of Court when required.

XLV. And be it further enacted, That the proper officer of the Court to be established by virtue of this act shall, on the reasonable request of such prisoner, or of any creditor or creditors of such prisoner, or his, her, or their attorney, produce and shew to such prisoner, creditor or creditors, or his, her, or their attor-

ney, at such times as the said Court shall direct, such petition, schedule, order, and judgment, and all other orders and proceedings made and had in such matter; and that a true copy of every such petition, schedule, order, judgment, and other proceedings, signed by the officer in whose custody the same shall be, or his deputy, certifying the same to be a true copy of such petition, schedule, order, judgment, or other proceeding, as the case may be, without being written on stamped paper, shall at all times be admitted, in all Courts whatever, as legal evidence of the same respectively.

Prisoners may, after their discharge, be examined as to their estate and effects, on application of assignees.

XLVI. And whereas the estates both real and personal of any prisoner who may be discharged by virtue of this act, may not be sufficiently described or discovered in the schedule before directed to be delivered upon oath by such prisoner, or the assistance of such prisoner may be necessary to adjust, make out, recover, or manage his estate or effects, for the benefit of his or her creditors; be it therefore enacted by the authority aforesaid, That it shall and may be lawful to and for the assignee and assignees of the estate and effects of any such prisoner, who shall obtain his or her discharge in pursuance of this act, from time to time to apply to the Court to be established by virtue of this act, that such prisoner may be further examined as to any matters or things relating to his or her estate and effects, either by such Court, or by any justice of the peace for the county, riding, division, or place where such prisoner shall then reside; and if such Court shall direct any such examination before any such justice, such justice shall send for or call before him such prisoner, by such warrant, summons, ways, or means as he shall think fit; and if such prisoner shall appear before such justice, such justice

shall examine him or her, upon oath or otherwise, as to such matters and things as such assignee or assignees shall desire, relating to the estate and effects of such prisoner; and if any such prisoner, on payment or tender of payment of such reasonable charges as such justice shall judge sufficient, shall neglect or refuse to appear before such justice, not having a lawful excuse allowed by such justice, or being come before such justice shall refuse to be sworn, or to answer such questions as by such justice shall be put to him or her, relating to the discovery of his or her estate and effects, vested or intended to be vested in such assignee or assignees as aforesaid, as required by the order of the said Court, such justice shall certify such default to the said Court; and thereupon, and also in case such prisoner shall neglect or refuse to appear before such Court to be examined by such Court, if the Court shall think fit so to order, or appearing before such Court shall refuse to be sworn, or to answer such questions as shall be put to him or her, relating to the discovery of his or her said estate or effects, then and in any of such cases it shall be lawful for such Court by warrant to commit such prisoner so offending to the common gaol of any county or place, there to remain without bail or mainprize until such time as he or she shall submit himself or herself to such Court, and answer upon oath or otherwise, as shall be required, to all such lawful questions as shall by such Court be put, or ordered to be put to him or her, for the purposes aforesaid.

Such persons refusing to appear or to answer questions, &c. may be committed.

XLVII. And be it further enacted, That the said Court to be appointed by virtue of this act, shall immediately after the end of six months next after the appointment of an assignee or assignees under this act, at the request of any one or more creditors, summon

Assignees to be examined within six months after appointment.

such assignee or assignees before him, and examine him, her, or them, upon oath or otherwise, touching his, her, or their receipts and payments, and shall thereupon order the money in the hands of such assignee or assignees to be paid into the said Court, and that such dividend be made of the estate and effects of such prisoner as it may think proper; and in case any dividend or dividends shall remain in the hands of such assignee or assignees for the space of twelve months next following the declaring thereof, it shall and may be lawful to and for such Court, and it is hereby authorized, to order and direct that such unclaimed dividend or dividends shall be immediately paid into Court; and in default of payment of such dividend or dividends by the time by the said Court to be for that purpose limited, it shall and may be lawful to and for the said Court to make such summary remedy for the purpose, by a distress and sale of the goods and chattels of such assignee or assignees, as to them shall seem proper; and if no sufficient distress can be found, then and in such case the said Court shall be at liberty to commit the offender to the common gaol or house of correction, without bail or mainprize, there to remain until the said Court shall make other order to the contrary.

Dividends remaining in their hands for 12 months, shall be immediately paid into Court.

XLVIII. And be it further enacted, That in all cases in which the said Court is by this act authorized to award costs against any person or persons, it shall and may be lawful for the said Court to cause such costs to be recovered from such person or persons in the same manner as costs awarded by a rule of any of the superior courts at *Westminster* may be recovered.

Costs how to be recovered.

XLIX. And whereas it may be convenient that the hearing of the petition, and other proceedings relating thereto, of all persons confined for debt, da-

Places where petitions and proceedings relating to

persons in custody shall be heard.

mages, costs, sum or sums of money, or contempt for non-payment of money, in the custody of the sheriffs of the city of *London* and sheriff of the county of *Middlesex*, and of the warden of the *Fleet prison*, should be heard and determined in some convenient place the nearest to the prisons of such sheriffs; be it therefore enacted, That all petitions and other proceedings relating thereto, of all persons confined as aforesaid, and in the custody of the sheriffs of *London* and sheriff of *Middlesex*, and of the warden of the *Fleet prison*, may, if the said Court shall think fit, be heard and determined at the *Guildhall* in and for the said city of *London*, or at the Sessions House in the *Old Bailey*, or at such other place in the city of *London* as the said commissioner for the time being shall appoint for that purpose.

Persons discharged from contempts of Court for non-payment of costs to be relieved from other costs, &c.

L. And be it further enacted by the authority aforesaid, That all persons who have been discharged under any act for the relief of insolvent debtors from contempts of any court for non-payment of money or costs, shall be deemed and taken to have been discharged, not only from costs ordered to be paid, but also from all costs which such persons would be liable to pay in consequence or by reason of such contempts, or on paying the same; and also that all persons from whose demands for costs any person shall be discharged by virtue of this or any former act or acts, shall be deemed and taken to be creditors of such last-mentioned persons, and entitled to the benefit of all the provisions made for creditors by such act or acts.

This act not to defeat the proceedings in any commission of bankrupt.

LI. Provided always, That nothing in this act contained shall extend or be construed to extend to defeat the proceedings in any commission of bankrupt which may be issued against any prisoner who may

claim the benefit of this act, before such prisoner shall have obtained an order for his discharge under this act, but that every such commission shall have relation to avoid any assignment of the estate and effects of the said prisoner under this act, as such commission would have had to avoid any assignment by such prisoner if this act had not been made.

Continuance of act.

LII. And be it further enacted, That this act shall continue in force until the first of *June* one thousand eight hundred and twenty-five, and thenceforth until the end of the next session of parliament, and no longer.

Act may be altered this session.

LIII. Provided always, and be it further enacted, That this act, or any part thereof, may be repealed or altered by any act or acts to be made in this present session of parliament.

Anno Tertio GEORGII IV. Regis.

CAP. CXXIII.

An Act to amend an Act of the First Year of His present Majesty, for the Relief of Insolvent Debtors in England.

[6th August 1822.]

1 G. 4. c. 119.

WHEREAS an act passed in the first year of His present Majesty's Reign, intituled *An Act for the Relief of Insolvent Debtors in* England, *to continue in force until the first day of* June *one thousand eight hundred and twenty-five;* and it is expedient to amend the same in the manner herein-after mentioned; be it therefore enacted and declared, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful for the provisional assignee of the Court for relief of insolvent debtors, to take possession himself, or by means of a messenger of the said Court, or other person or persons appointed by him, of all the real and personal estate and effects of every such prisoner as shall subscribe such petition, and execute such conveyance and assignment, as in the said recited act mentioned; and, if the said Court shall so order, to sell or otherwise dispose of such goods, chattels, and personal estate, or any part thereof, and, if the Court shall so order, of the real estate of such prisoner, according to the provisions of the said recited act, for the purposes of the said recited act, and out of the proceeds of such real or personal estate to defray, in the first place, all

Provisional assignee to take possession of estate, &c. conveyed to him; and out of the proceeds to pay the expenses of taking possession.

such costs and expenses of taking possession of or seizing and selling the same, as shall be allowed by the said Court, and account for the produce thereof to the said Court; and all and every the real or personal estate, money and effects, vested in or possessed by such provisional assignee by virtue of the said recited act or this act, shall not remain in him, if he shall resign or be removed from his office, or in his heirs, executors, or administrators, in case of his death, but shall, in every such case, go to and be vested in his successor in office.

All property vested in him shall go to his successor.

II. And be it further enacted, That it shall be lawful for the provisional assignee to sue in his own name, if the said Court shall so order, for the recovery, obtaining, and enforcing of any estate, debts, effects, or rights of any such prisoner; and in case of the dismission of the petition of any such prisoner praying for his discharge, which the said Court is hereby empowered to dismiss, whenever it shall seem fit, all the acts done before such dismission by the said provisional assignee, or other persons acting under his authority, according to the order of the said Court, shall be good and valid.

Provisional assignee to sue in his own name.

All his acts done before dismissal of petition shall be valid.

III. And whereas it is enacted by the said recited act, that when the said Court shall adjudge any prisoner to be entitled to his discharge, such Court shall appoint a proper person or persons to be assignee or assignees of the estate and effects of such prisoner, for the purposes of the said recited act; it is hereby further declared and enacted, That it shall and may be lawful for the said Court, as often as it shall see cause, for the better preserving and securing the property of any prisoner, to appoint at any time after the filing of such prisoner's petition, and before the said Court shall adjudge him entitled to his discharge, as well as after

Court may appoint an assignee at any time after filing petition.

such adjudication, one or more assignee or assignees of the estate and effects of such prisoner, for the purposes aforesaid; and when such last mentioned assignee or assignees shall have signified to the said Court his or their acceptance of the last-mentioned appointment, every such prisoner's estate, effects, rights, and powers vested in such provisional assignee as aforesaid, shall immediately be assigned by such provisional assignee to such last-mentioned assignee or assignees, in trust, for the benefit of such last-mentioned assignee or assignees and the rest of the creditors of every such prisoner, in respect of or in proportion to their respective debts, according to the provisions of the said recited act; and the assignee or assignees of every such prisoner, at any time appointed, shall be and is and are hereby empowered to use and exercise all the powers, authorities, rights, and duties, and shall be subject to all the duties, liabilities, and punishments, given or ordained by this or the said recited act with respect to the provisional or other assignee or assignees of any prisoner; and in all cases after assignment by the provisional assignee, all the estate and effects of every such prisoner shall be, to all intents and purposes, as effectually and legally vested by relation in all and every such assignee or assignees, as if the first assignment had been made by such prisoner to him or them; but no act done under or by virtue of such first assignment shall be thereby rendered void or defeated, but shall remain as valid as if no such relation had taken place.

Power to all assignees to exercise the powers given to provisional assignee.

Assignment to assignees to vest by relation from time of first assignment.

IV. And be it further enacted, That from and after the passing of this act, in all cases in which any assignee or assignees of any insolvent's estates shall wilfully retain in his or their hands, or otherwise employ for his or their own benefit, any sum or sums

Enabling court to charge assignees with interest at a rate not exceeding 20*l.* per cent. for using the money belonging

of money part of the estates of such insolvent, the said Court shall have full power and authority to order such assignee or assignees to be charged in his or their accounts with the estates of such insolvents with such sum or sums of money as shall be equal to the amount of interest computed at a rate not exceeding twenty pounds *per centum per annum*, on all sums of money appearing to the said Court to be so retained or employed by him or them, for the time or times during which he or they shall have so retained or employed the same; and the said Court shall in pursuance of such order charge such assignee or assignees in their accounts with such sum or sums of money accordingly.

to the insolvent's estate.

V. And be it further enacted, That the said Court or the justices acting under the authority of the said recited act, shall have the same power to examine into all debts in the prisoner's schedule, whether the same shall be therein stated to be admitted or disputed, or to be admitted in part and disputed in part, as is enacted by the said recited act as to the debts stated to be admitted therein; and shall also have power to enquire whether any of such debts have been improperly admitted or improperly disputed by the prisoner with any fraudulent intent.

The Court shall have power to examine debts, whether stated admitted or disputed in the schedule.

VI. And be it further enacted, That in the adjudication of the said Court, that any prisoner is entitled to the benefit of the said act, and the order thereon, it shall not be necessary to specify the several creditors and persons claiming to be creditors of such prisoner, as required by the said recited act, but it shall be sufficient, if the said Court shall think fit, to refer in such order to the schedule of such prisoner as specifying such creditors, or persons claiming to be creditors of such prisoner, as to whom the said Court

Directing to refer to schedule as to creditors instead of specifying them in adjudication, and to enable the Court to adjudicate generally, without naming particular creditors, &c.

shall adjudge the said prisoner to be entitled to the benefit and protection of the act, and to be discharged forthwith; and that in all cases where it shall appear to the said Court that any prisoner shall have done or committed any act for which the said Court is by the said recited act authorized to order that such prisoner shall not be discharged out of custody by virtue of the said recited act, or receive or be entitled to any protection, until he or she shall have been in custody at the suit of some one or more of the persons who were creditors at the time of petitioning the said Court, or had since become creditors in respect of debts then growing due, and from whose claims he or she shall be discharged by the judgment of the said Court, for a period or periods not exceeding three years in the whole, the said Court may adjudicate thereon in the words of the said recited act, without naming any such one or more creditor or creditors in such adjudication; and thereupon the said insolvent shall under such adjudication be subject and liable to be detained in prison by his or her then detaining creditor or creditors, and to be arrested or charged in custody by any of the other creditors in his or her schedule, until he or she shall have been in custody for such period or periods in the whole as shall be specified in such adjudication.

The Court may order expenses of reference to be paid out of the first proceeds.

VII. And be it further enacted, That where it shall have been referred to an officer of the said Court, or to any examiner appointed by justices of the peace, by virtue of the said recited act, to investigate the accounts of any prisoner, and to examine into the truth of the schedule of such prisoner, or the matters thereof, it shall be lawful for the said Court, if it shall see cause, to order all the fees and expenses thereof, paid by any creditor or creditors, to be repaid to him or

them out of the first money received by the provisional or other assignee or assignees of such prisoner, from or by his estate or effects; and when it shall have been so referred to any officer or examiner, it shall be lawful for such officer or examiner to order the attendance of such prisoner, or of any prisoner who shall be a material or necessary witness in any matters so referred to such officer or examiner, as often as such officer or examiner shall think fit; and the prisoner mentioned in such order shall be accordingly carried before such officer or examiner, for which such order shall be a sufficient warrant; and the keeper of the prison or his deputy, so carrying any prisoner before such officer or examiner, shall receive for the same the sum of ten shillings and no more, to be paid by the person or persons at whose requisition the said reference shall have been had, and such officer or examiner shall and may, under such reference, administer oaths, and accept the solemn affirmation of any person being a quaker, and examine all witnesses and parties upon their oaths or affirmations touching all matters relating thereto; and if any prisoner or other person taking an oath, or making any such affirmation, under the provisions of this act, shall wilfully forswear and perjure himself or herself in any oath to be taken under this act, or shall make any wilful false affirmation, and shall be lawfully convicted thereof, he or she so offending shall suffer such punishment as by law may be inflicted on persons convicted of wilful and corrupt perjury: Provided always, that no keeper of any prison shall be required or compelled to carry any prisoner a greater distance than two miles from his prison, to or before such officer or examiner; except that the keepers of prisons in *Middlesex* or *London*, and of the prisons of the *King's Bench* and *Marshal-*

Prisoner to attend if required in matters of reference.

Fee to keeper.

False swearing perjury.

Limitation as to distance in conveying prisoners.

sea, and in *Horsemonger Lane*, and of and in the borough of *Southwark* in the county of *Surrey*, shall carry their prisoners before such officer at the office of the said Court, or at such other place within the bills of mortality as the said Court shall direct.

Court may order prisoners to be confined within the walls.

VIII. And be it further enacted, That in all cases in which the said Court shall order any prisoner to be discharged from custody, so soon as such prisoner shall have been in custody during a certain period, or not to be discharged until he shall have been in custody during a certain period, according to the provisions and limitations in the said recited act, the said Court may, if it shall see cause, order such prisoner to be confined during any such period within the walls of such prison, and not within any rules or liberties thereof.

The sessions empowered to remand a prisoner who refuses to be sworn, or to answer proper questions, &c.

IX. And be it further enacted, That it shall be lawful to the justices at their general or quarter or adjourned sessions, to remand to prison any prisoner brought before them, who shall refuse to be sworn, or to answer upon oath all such questions as to the said justices shall appear relevant and proper, or for the purpose of amending his schedule, or for further examination or hearing, and to order him to be brought before them at the same or some subsequent general or quarter or adjourned sessions; and such order shall be a sufficient warrant to the keeper of the prison wherein he shall be in custody, to bring him before the same or such subsequent sessions, according to the direction thereof; and that the said justices at session shall certify to the said Court the said remand, with the cause thereof; and that the said justices shall have such and the same powers of compelling the attendance of witnesses, and of requiring and compelling the production of books, papers, and

To compel the attendance of witnesses and production of papers.

writings, for the purposes of the said recited act or this act, as now are possessed by any of the superior Courts at *Westminster;* and the clerk of the peace, who is hereby authorized to issue such subpœnas as may be requisite, and in each of which the names of not more than four persons shall be inserted, for each subpœna, receive from the person requiring the same the sum of two shillings and sixpence, and no more: Provided always, that nothing herein contained shall extend to the compelling of the attendance of any witness, unless the party on whose behalf such witness shall be required to attend, shall have previously tendered such allowance for expenses for his attendance, as in the judgment of the said Court or of the said justices, at the general or quarter or adjourned sessions, shall appear to be reasonable.

Expenses to be previously tendered.

X. And be it further enacted, That where it shall appear to the satisfaction of the said Court, that any prisoner in actual custody, or arrested within the counties of *Middlesex* or *Surrey*, or the city of *London*, had, at or immediately before such arrest, his usual place of abode in some other county or place, and had been arrested in the said counties of *Middlesex* or *Surrey*, or in the said city of *London*, it shall and may be lawful for the said Court to receive affidavits of any creditor or creditors, or of any other person or persons not resident within the said counties of *Middlesex* and *Surrey*, or the city of *London*, in opposition to the discharge of such prisoner under the said recited act, and, if the said Court shall think fit, to permit interrogatories to be filed, for the examination or cross-examination of any person making or joining in such affidavit, and also to stay the discharge of every such prisoner, until such interrogatories shall be fully answered, to the satisfaction of the said Court,

In case of collusive arrest in Middlesex, London, or Surrey, of prisoner residing in another county, affidavits may be used in opposition.

or until the expiration of six weeks from the filing of such interrogatories.

No prisoner shall be discharged as to any action for any debt admitted in his schedule, &c. for want of the plaintiff proceeding therein.

XI. And be it further enacted, That no prisoner who shall have petitioned the said Court for relief under and by virtue of the said recited act, shall be discharged out of custody as to any action, suit, or process in or by which he or she shall be charged or detained in custody, for any debt or damages which are or shall be admitted by such prisoner in his or her schedule filed in the said Court under the said recited act, or which shall be disputed therein only as to the amount of such debt or damages, by or by virtue of any supersedeas, judgment of non-pros, or judgment as in the case of a nonsuit, for want of the plaintiff or plaintiffs in such action, suit, or process proceeding therein.

Petitions from married women petitioning to be discharged from debt may be received by the Court without requiring the conveyance required by the recited act; but conveyance for the vesting property shall be made to provisional assignee, &c.

XII. And whereas by the provisions in the said act any prisoner petitioning for the benefit of the said act must execute a conveyance and assignment of all the estate, right, title, interest, and trust of such prisoner to all the real and personal estate and effects of such prisoner (except as therein excepted), so as to vest all such real and personal estate and effects in the provisional assignee of the said Court, and the said Court is empowered to order a judgment to be entered up against such prisoner in one of superior Courts at *Westminster* for the amount of the debts of such prisoner which shall at the time of such order remain due and unpaid, from which such prisoner shall be discharged by the said Court; and such prisoner is required to execute a warrant of attorney to authorise the entering up such judgment: And whereas a married woman being a prisoner for debt cannot execute such conveyance or assignment, or such warrant of attorney for the purposes aforesaid,

and therefore cannot petition for and obtain a discharge under the said act, without special provision being made for such purposes; be it therefore enacted, That if any married woman being a prisoner within the intent and meaning of the said act, shall petition to be discharged from any debt or debts under the provisions of the said act, it shall be lawful for the said Court to receive such petition without requiring such married woman to execute such conveyance or assignment, or such warrant as aforesaid, according to the provisions of the said act; but instead thereof, that the said Court shall require such married woman to execute a conveyance and assignment for vesting in such provisional assignee as aforesaid, all property, real and personal, to which she may be entitled for her separate use, or over which she shall have any power of disposition notwithstanding her coverture, or which shall be vested in any trustees or trustee or other persons or person for her benefit, and to deliver up all personal estate and effects of which she shall have the actual possession, except her wearing apparel, bedding, and other such necessaries, not exceeding in the whole the sum of twenty pounds; and also all other real and personal estate and effects to which she shall be entitled in any manner whatsoever, in possession, remainder, or reversion, subject only to such right, title, or interest as her husband may have therein; all which acts she is hereby empowered to do without her husband, notwithstanding her coverture, so nevertheless as not to prejudice any rights of her husband in such real and personal estate and effects respectively; and all such estate and effects, real and personal, in possession, reversion, or remainder, shall, by such conveyance and assignment so to be executed under the order of the said Court, be as

effectually vested in such provisional assignee as aforesaid, as the same might have been vested in such assignee by the conveyance or assignment of such woman if she had been sole and unmarried, subject only to the rights of her husband therein as aforesaid; and all provisions in the said act or in this act contained, touching the real and personal estate of any prisoner seeking to be discharged under the authority of the said act, shall apply to such real and personal estate and effects respectively, in the same manner as the same would apply to such personal estate and effects if such woman had been sole and unmarried, subject only to the rights of her husband therein; and such married woman shall also execute a warrant of attorney to confess judgment in one of the superior Courts aforesaid, for the amount of the debts remaining unpaid, from which she shall be discharged under the authority of the said act as aforesaid; and such warrant of attorney so executed shall be sufficient authority for entering up judgment against such woman accordingly, notwithstanding her coverture; but such judgment shall not in any manner prejudice or affect the rights of her husband, except that the same shall be deemed and taken to be her debt in case she shall die in the life-time of such husband, to the end that the same may be discharged out of her personal assets in a due course of administration, or out of her real estate, if any she shall have at the time of her death, but without prejudice to any estate or interest of her husband therein as tenant by the curtesy; and in case such woman shall, during the life-time of her husband, become entitled to any property for her separate use, such judgment may be enforced against such separate property, by suit in equity, or otherwise, under the order of the said Court, for the purpose of

obtaining payment of so much of the debts from which such woman shall have been discharged by such Court as shall then remain unpaid; and in case such woman shall survive her said husband, such judgment may be after his death enforced against such woman or her property, real and personal, in such and the same manner and with the same effect as it might have been if she had been sole and unmarried at the time she executed such warrant to confess judgment, and at the time when such judgment shall have been entered up as aforesaid: Provided always nevertheless, that the discharge of any married woman under the authority of the said act or of this act, shall not operate to discharge her husband from any debt from which his wife shall be so discharged, but such debt, so far as the same shall remain unpaid or unsatisfied, shall be chargeable upon and in force against such husband, as fully, to all intents and purposes, as if his wife had not obtained such discharge.

Prisoners obtaining discharge shall be discharged against any creditor for any sum payable at a future time.

XIII. And be it further enacted, That any prisoner who shall have been or shall be declared entitled to the benefit of the said recited act, and who shall have obtained or shall obtain a discharge under the said act, shall be discharged against every creditor for any sum of money payable at any future time or times, who shall under the said recited act have become entitled to a dividend of the estate of such prisoner in respect to any debt or claim so growing due and payable, and which shall not be due or payable at or before the time of such prisoner obtaining his or her discharge, in like manner, to all intents and purposes, as if such debt or claim were payable presently and not at a future day.

Court may cause insolvent to be apprehended and remanded when he refuses to appear.

XIV. And whereas by the said recited act the said Court is authorized in certain cases, upon the application of any creditor of a prisoner, to direct such prisoner after his discharge to be brought again before them, and upon due notice to be given by such creditor, to rehear the matter, and make such further order as to them shall seem fit, in execution of the powers in the said recited act contained; be it further enacted, That where in any such case the insolvent after his discharge shall refuse or neglect to appear before the said Court, or before the justices at their general or quarter or adjourned sessions, when the said Court shall direct the matter to be reheard before such justices, who are hereby authorized to rehear the same, and to make such further order as to them shall seem fit, in execution of the powers in the said recited act contained, on the day and at the time specified in any rule of the said Court, a copy whereof shall have been duly served on such insolvent, it shall and may be lawful for the said Court to order the said insolvent to be apprehended and remanded into custody, in such prison as the said Court shall direct, and to issue their warrant accordingly, and to cause him to be brought up for examination as often as to the said Court or to the said justices shall seem fit.

Sessions authorized to rehear if Court so directs.

Court may rehear and revise their adjudication and order where insolvent has been remanded for a period.

XV. And be it further enacted, That if any prisoner shall have been adjudged and ordered by the Court to be discharged from custody after a certain period, or not to be discharged out of custody, or receive or be entitled to any protection under the said recited act, until he shall have been in custody at the suit of certain creditor or creditors in such order named, for a certain period therein mentioned, and the said Court shall see good and sufficient cause to believe that such adjudication or order has been obtained on false evi-

dence, or otherwise fraudulently obtained or improperly made, it shall and may be lawful for the said Court to direct such prisoner to be brought again before them, and upon due notice to be given to the creditor or creditors named in the said order, to rehear the said matter, and set aside the said adjudication and order, if they shall see cause, and to make such further order as to them shall seem fit, in execution of the powers in the said recited act contained.

An attorney or agent removed from the files of the Court and practising, shall be guilty of a contempt.

XVI. And be it further enacted, That in case any person having been admitted on the files of the said Court, to practice therein as an attorney or agent on the behalf of any prisoner in actual custody, shall be by the said Court removed from the said files of the said Court, and shall after such removal practise in the said Court as an attorney or agent, on behalf of any prisoner in actual custody, he shall be deemed and taken to be guilty of a contempt of the said Court, and shall be liable to fine as well as imprisonment for the same, as shall every attorney and agent, not admitted on the files of the said Court, who shall practise contrary to the provisions of the said recited act or of this act.

Before whom affidavits are to be sworn.

XVII. And be it further enacted, That all affidavits to be used before the said Court, or any commissioner thereof, or any justices of the peace, or any officer of the said Court, to whom a reference shall be made by the said Court, or any examiner appointed under the said recited act, shall and may be sworn before the said Court, or any commissioner thereof, or any commissioner appointed by the said Court for the purpose of taking affidavits, or any master extraordinary in Chancery, or commissioner for taking affidavits in any of the superior Courts of *Westminster Hall*, or in *Scotland* or *Ireland*, before a magistrate of the county,

division, city, town, or place, where the affidavit shall be sworn.

All estates, &c. of insane persons vested on their discharge in provisional or other assignees.

XVIII. And be it further enacted, That in every case where a prisoner shall be or become of unsound mind, and proceedings shall be had under the said recited act for the discharge of such prisoner by the said Court, all and every estate, right, title, interest in law and equity, real and personal, power, benefit, and emolument whatsoever, which if such prisoner were of sound mind could or ought to be assigned by such prisoner, pursuant to the provisions of the said recited act or this act, shall by force and virtue of the order for the discharge of such prisoner be vested in the provisional assignee of the said Court, or in other assignee or assignees appointed by the said Court, and named in the said order, as fully and effectually, and in the same manner, and with all and every the same consequences and effects, both in fact and law, to all intents and purposes whatsoever, as if such prisoner had been of sound mind, and had duly conveyed the same to such provisional assignee at the time and in the manner in the said recited act provided; and every assignment hitherto made in such case by the said Court is and shall be good and effectual to all intents and purposes; and that it shall be lawful for the said Court to order judgment to be entered up against such prisoner, in the same manner as if he or she had been of sound mind, and had executed a warrant of attorney to authorize the entering up of such judgment, in the manner by the said recited act provided.

Assignments hitherto made shall be good.

Court may order judgment to be entered up.

After assignment avoided by commission of bankrupt, no action to be brought, &c.

XIX. And be it further enacted, That when any assignment shall be avoided by a commission of bankrupt being issued against any prisoner, no action or suit shall be commenced for any thing done under or

by virtue of the said assignment, except to recover any property, estate, money, or effects of the said bankrupt, detained after demand thereof.

Court may invest unclaimed money, and apply the profits towards expenses of the Court.

XX. And whereas it may happen that money may remain in the said Court, produced by the estate and effects of insolvent debtors who have taken the benefit of the said recited act, or some other act for the relief of insolvent debtors, which has not been, or may not be claimed by the assignees or creditors of such insolvent; be it further enacted, That it shall and may be lawful for the said Court to cause the same, or any part thereof, to be invested in government securities, and to apply the interest and profit arising therefrom, towards defraying the expenses of the said Court: Provided always, that no such money shall be so invested, until the same shall have been in the hands of the said Court for twelve months at the least.

After the Court is built in Portugal-street, all matters to be heard there, &c.

XXI. And whereas it is intended to erect a building for the said Court in or near to *Portugal-street, Lincoln's Inn Fields*, which will be at a convenient distance from the several prisons in *London* and *Middlesex*, and from the prisons of the *King's Bench, Marshalsea, Horsemonger Lane*, and of the borough of *Southwark*, in the county of *Surrey;* be it further enacted, That from and after the same Court shall be erected, and ready for the dispatch of business therein, all petitions and other proceedings and matters of all persons confined in the said prisons, shall be heard and determined therein, unless the said Court shall at any time see cause to adjourn its sittings to any other place, and shall adjourn accordingly, which it is hereby empowered to do; and that the said keepers of the said several prisons, or their deputies, shall be entitled to receive the sum of three shillings and no more from each prisoner, for carrying him before the said Court,

Fee to keepers, 3*s*. from each prisoner.

on the hearing of the matter of his petition and schedule.

In all rules, &c. it shall be sufficient to set out the substance, without setting out the other proceedings.

XXII. And be it further enacted, That in all rules, orders, warrants, and other proceedings of the said Court, under the said recited act or this act, or any act for the relief of insolvent debtors, it shall be sufficient to set forth such rule, order, or warrant, or in case of a warrant for the apprehension or detention of any person, for a contempt in disobeying any order or rule of the said Court, or for the apprehension or detention of any person for the appearance of such person before the said Court, or for the enforcing any rule or order of the said Court, it shall be sufficient to set forth such rule or order, and the warrant thereon, and that the insolvent in any order, rule, warrant, or other proceeding mentioned, has been duly discharged under the said recited act or this act, or some other act for the relief of insolvent debtors, if he has been discharged, or if he has not been discharged, that the prisoner has applied by petition to the said Court for his or her discharge from confinement, according to the provisions of the said acts, without setting forth in any such order, rule, warrant, or other proceeding, the petition, conveyance or assignment to the provisional assignee, appointment of assignee or assignees, or any assignment whatever, or the schedule, balance sheet, order for hearing, adjudication, order for discharge, or any other rule, order, or proceeding of or in the said Court, or any part thereof, except as aforesaid.

Court to regulate its sittings within certain periods.

XXIII. And be it further enacted, That from and after the expiration of six weeks from the last day of *Trinity* Term until the first day of *November* in every year during the continuance of the said recited act and this act, the said Court shall have full power and authority to regulate and appoint the sittings of the

said Court at such times as to the commissioners of the said Court shall appear fit and necessary for the due administration of justice in the said Court; any thing in the said recited act to the contrary thereof in anywise notwithstanding: Provided always, that no adjournment of the said Court shall be at any time for more than six weeks.

In indictments, &c. for omitting, &c. property from schedule, or aiding therein, it shall be sufficient to set out the substance of the offence charged.

XXIV. And be it further enacted, That in every information or indictment against any person, for having, with intent to defraud his creditors, wilfully and fraudulently omitted in his schedule, as finally amended and filed in the said Court, at the time of the order for his discharge from actual custody, any effects or property whatsoever, or retained or excepted out of the schedule, as wearing apparel, bedding, working tools, and implements, and other necessaries, more in value than twenty pounds, or against any person for aiding and assisting him to do the same, it shall be sufficient to set forth the substance of the offence charged on the defendant, without setting forth the petition, or conveyance or assignment to the provisional assignee, appointment of assignee or assignees, or any assignment whatever, or balance sheet, order for hearing, adjudication, order for discharge or remand, or any warrant, rule, order, or proceeding of or in the said Court, except so much of his schedule as may be necessary for that purpose.

Anno Quinto Georgii IV. Regis.

CAP. LXI.

An Act to amend certain Acts for the Relief of Insolvent Debtors in England.

[17th June, 1824.]

1 G. 4. c. 119.

3 G. 4. c. 123.

WHEREAS an act passed in the first year of His present Majesty's Reign, intituled *An Act for the Relief of Insolvent Debtors in* England, *to continue in force until the first day of* June *One thousand eight hundred and twenty-five;* and a certain other Act passed in the third year of His Majesty's Reign, intituled *An Act to amend an Act of the first year of His present Majesty, for the Relief of Insolvent Debtors in* England; and it is expedient to alter and amend the same: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That so much of the said acts as gives any power, authority, or jurisdiction, or enables the Court for relief of insolvent debtors to give or delegate any power, authority, or jurisdiction, to any justices of the peace at their general or general quarter sessions of the peace, or at any adjournment thereof, for any county, riding, city, cinque port, antient town or member, division, liberty, or place, shall be, from and after the first day of *September* one thousand eight hundred and twenty-four, repealed;

So much of said Acts as gives jurisdiction to justices of sessions, repealed;

except as to the justices of the peace at their general or general quarter sessions of the peace, or at some

except as to Wales.

adjournment thereof, for any county, city, liberty, or place in the principality of *Wales*; and the same is hereby repealed accordingly, except as aforesaid.

Court for relief of insolvent debtors may make order to bring prisoner to court house in assize town of county where such prisoner is in custody.

II. And be it further enacted, That where any prisoner shall be in any county gaol, or other gaol or prison in *England*, except in the counties of *Middlesex* or *Surrey*, or in the city of *London*, or the borough of *Southwark*, upon any process whatsoever issuing out of His Majesty's superior Courts in *Westminster Hall*, or out of any court whatsoever in *England*, then and in such case, upon petition being made to the said Court for relief of insolvent debtors by such prisoner, in manner directed by the said recited acts or either of them, and upon such schedule being delivered into the said Court as is required by the said recited acts or either of them, it shall be lawful for the said Court, and the said Court is hereby authorized and required, on the application of such prisoner, to make a rule or order to cause such prisoner to be brought to and to appear at the court house or other place in any assize or other town in the county, or county of a city or town, where such prisoner shall be imprisoned, on such day and at such time as shall be mentioned and specified in such order, not being more than four calendar months after the date of such order; and the expense of conveying such prisoner to any such assize or other town, in every case where the gaol in which such prisoner shall be confined shall not be situate within such assize or other town, not exceeding one shilling a mile, shall be paid to the keeper or gaoler, or officer who shall bring such prisoner to such assize or other town, in obedience to such rule or order, out of the estate or effects of such prisoner, if the same shall be sufficient to pay such expense, and if not, then such expense

Expense of conveying prisoner to assize town paid to keepers, &c. but not to exceed 1s. per mile.

shall be paid by the treasurer of the county, county of a city or town, in which such prisoner shall be imprisoned, as the same shall be directed or ordered by the commissioner before whom such prisoner shall be brought; and the justices of the peace of such county, county of a city or town, are hereby empowered and required to order at their general or general quarter sessions next ensuing the day mentioned in such rule or order, such treasurer to pay the same; and the said Court shall cause like notice of every such petition and schedule of such prisoner, and of such rule or order of the Court for bringing such prisoner to such assize or other town thereupon, as is required by the said first-mentioned act, as to the matter of petitions heard before the Court.

Notice to creditors.

Commissioner to attend at such court-house, and give such relief or otherwise, as in Insolvent Court in London.

III. And be it further enacted, That on such day so appointed by order of the said Court for relief of insolvent debtors, it shall be lawful for any one commissioner of the said Court, and he is hereby authorized and required to attend at such court house or other place in such assize or other town, and to proceed on such day, and from day to day if requisite, in hearing the matter of the petitions of any and every such prisoner or prisoners, who shall appear at or be brought to such assize or other town, and to pronounce any such judgment, and to make all such orders, and to give all such directions, and to do all such other matters and things requisite for the discharging or remanding of any and every such prisoner, and for the assignment and application of the estate and effects of every such prisoner; and such commissioner shall have such power to discharge or remand any and every such prisoner, and in all other respects to act and do with respect to any and every such prisoner, and with respect to the petition and schedule

Power to discharge or remand.

of any and every such prisoner, as the said Court for the relief of insolvent debtors could or may do under or by virtue of the said recited acts, or either of them; and all judgments, rules, orders, directions, proceedings, acts, matters, and things, for or relating to such prisoner, creditors and assignees, done by such commissioner, shall be as good, valid, and effectual to all intents and purposes, as if such judgments, rules, orders, directions, proceedings, acts, matters, and things had been done by the said Court for the relief of insolvent debtors; and the same shall be made a record of the proceedings in such Court for the relief of insolvent debtors, and shall be transmitted to such Court, signed by such commissioner, to be a record of the said Court, and to be kept as such among the records thereof.

All acts, &c. to be of record in Insolvent Court.

IV. And be it further enacted, That it shall be lawful for His Majesty to appoint one other commissioner, being a barrister at law of ten years standing at least, in addition to those already appointed, and that three of the said commissioners shall from time to time severally make circuits, and give their attendance respectively at the several assize or other towns at which any prisoner or prisoners shall be ordered to appear in manner aforesaid, so that the circuits shall be three times in each year, if requisite; and during the said circuits, one of the said commissioners shall be attendant and presiding in the said Court established by the first mentioned act; and the time and manner of making such circuits, and the officers necessary to attend the commissioners making the same, shall be regulated in such manner as shall be agreed on between the commissioners of the said Court, with the approbation of one of His Majesty's principal secretaries of state for the time being; and it shall and

His Majesty to appoint an additional commissioner.

Circuits to be made.

Travelling expenses to be paid by the treasury.

may be lawful for the lord high treasurer, or lords commissioners of His Majesty's treasury of the united kingdom of *Great Britain* and *Ireland*, for the time being, to direct that such sum or sums shall be paid as may appear fit and necessary for defraying the travelling expenses of such commissioners and officers in the execution of their duties under this act or the said recited acts, or either of them.

Clerk of the peace or his deputy shall attend and act as clerk to commissioner.

V. And be it further enacted, That in every county, or county of a city or town, the clerk of the peace of the county, or if the Court shall think fit, his sufficient deputy, to be approved of by the said Court, shall attend on all such occasions, with proper officers, to preserve order in the said court-house or other place, and may act as clerk to the commissioner under this act, to assist him in his performance of his several duties under this act in such county, or county of a city or town; and the said clerk of the peace, or his said deputy, shall, in consideration and recompence of and for his said trouble, be entitled to receive from every such prisoner, in whose case he shall so act, the sum of five shillings and no more, the same to be in lieu of all fees of every nature and kind for the performance of the duties under this act; and such fee shall be paid previous to the bringing up such prisoner before such chief or other commissioner.

Fee to him 5s. from each prisoner.

Notice of attendance of commissioner to be given in the London Gazette, &c.

VI. Provided always, and be it further enacted, That notice of the time and place or places of the attendance of such commissioner in each county, or county of a city or town, shall be given in the *London Gazette*, and in some public journal or newspaper published in each such county respectively, once in each of the two weeks immediately preceding the time appointed for such attendance.

When commissioner does

VII. And be it further enacted, That if on the day

appointed for the arrival of such commissioner, he shall not have arrived, or shall not attend at such court-house or other place, then and in every such case the court shall be considered as adjourned to the ensuing day, not being a *Sunday*; and if the ensuing day should be a *Sunday*, then to the next day, *Monday*, and so on from day to day, until the arrival of the said commissioner; and that all persons summoned or bound, or having occasion to attend the said Court, shall thereupon be bound to attend the same, according to every such adjournment, in the same manner in all respects as if such commissioner had regularly sat, and so adjourned the same; and that such commissioner who shall so arrive, shall proceed to sit and dispatch the business of the said Court, in the same manner in all respects as if he had regularly sat, and had himself made such adjournments of the said Court.

not attend on day appointed, the Court shall stand adjourned to the next day.

VIII. Provided always, and be it enacted, That such chief or other commissioner, who shall not arrive at any such assize or other town on the day so appointed by the said Court in that behalf as aforesaid, shall, without delay, state in writing the reason or cause which prevented him from arriving, and shall send the same forthwith by His Majesty's post, subscribed by himself, to one of His Majesty's principal secretaries of state.

Non-attendance on day appointed to be accounted for to government.

IX. And whereas it may sometimes be highly expedient that all the said commissioners should be absent from *London*, *Westminster*, and *Middlesex*, in different cities, towns, and places, at the same time; be it therefore enacted, That on any particular occasion, when the said commissioners shall be of opinion that it would be expedient that all the said commissioners should be absent from *London*, *Westminster*, and *Middlesex*, in different places at the same time, it shall

All commissioners may be absent from the Court in London, &c. in certain cases.

and may be lawful to and for such chief and other commissioners to state such opinion, together with the grounds and reasons thereof, in writing, to one of His Majesty's principal secretaries of state for the time being, and thereupon, if such secretary of state shall approve thereof, and the same shall be notified in writing to such chief and other commissioners by such secretary of state, it shall and may be lawful to and for all the commissioners to be absent from *London*, *Westminster*, and *Middlesex*, at the same time, in such places respectively as shall be so mentioned and allowed, and for that purpose to adjourn the said Court for relief of insolvent debtors, for such time as shall be permitted in and by such notification; any thing in the said recited acts, or either of them, to the contrary notwithstanding.

Examiners to be appointed in counties:

X. And be it further enacted, That the said Court, or the said commissioner upon his circuit, shall from time to time, as occasion may require, appoint as many fit persons as the said Court or he shall judge sufficient, to be examiners for the purposes of the said recited acts and this act, or any or either of them; and if it shall appear to the said commissioner on his said circuit to be expedient and proper that the accounts of any prisoner, and the matters of the schedule of such prisoner, should be further investigated and examined, then it shall be lawful for such commissioner to adjourn the hearing of the petition of such prisoner, and at the request of any one or more of the creditors, to order and direct that some one of the examiners so appointed shall examine into the matters of the said schedule, and certify his opinion thereon, as directed by such commissioner, of which all parties interested shall take notice; and that such examiner

Their fee to be

shall and may receive for his trouble the sum of one

pound, and no more, for every meeting under such order, to be paid by the person or persons requiring the same.

1*l* for every meeting.

XI. And be it further enacted, That where an order has issued for the hearing of the matter of the petition and schedule of any prisoner, at an assize or other town, such prisoner shall cause the duplicate of such petition and schedule, and all books, papers, and writings relating thereto, in his or her possession or power, to be lodged with the clerk of the peace of the county, or his said deputy, where he or she shall be in custody, within ten days after such order issued, or on such earlier day as shall be named in such order, and such prisoner shall be subject to such order as the Court shall make to enforce compliance with the directions of this act in this behalf; and that the said clerk of the peace or his said deputy shall, on the reasonable request of such prisoner, or of any creditor or creditors of such prisoner, or his or her attorney, produce and show to such prisoner, creditor or creditors, or his, her, or their attorney, such petition and schedule, and books, papers, and writings of such prisoner, and permit him, her, or them to inspect and examine the same, and may and shall receive the fee of one shilling from each and every creditor, or his, her, or their attorney, at each time of his, her, or their so requesting and having the production thereof, or any of them; and that such clerk of the peace, or his said deputy, shall provide for any such creditor or creditors, or his, her, or their attorney, requesting the same, a copy or copies of such petition or schedule, or such part thereof as shall be so required; and that such clerk of the peace, or his said deputy, shall be entitled to receive four-pence for every sheet so copied containing seventy-two words, and no more, unless the

Schedules and books to be lodged with the clerk of the peace;

who shall produce them to creditors:

His fee.

same shall be the last or only sheet, in which case he shall be entitled to four-pence for such last or only sheet, although it does not contain seventy-two words; and that every such prisoner shall cause the said duplicate of his schedule, and his said books, writings, and papers, to be brought to and be produced at his hearing.

Insolvent acts to extend only to prisoners within the walls; and not to prisoners removed by habeas corpus.

XII. And be it further enacted, That the said recited acts, or either of them, shall not extend to any person in actual custody, who shall not be at the time of filing his petition, and during all the proceedings thereon, in actual custody within the walls of the prison, and not within any rules or liberties thereof; nor to any prisoner who, after his commitment to any prison in any county or place where he or she had, at or lately before his or her arrest, his or her usual place of abode, other than in *Middlesex*, *Surrey*, *London*, or *Southwark*, aforesaid, shall cause himself to be removed by any writ of *habeas corpus*, or otherwise, from such respective prison to any other prison.

Power to Court, at the request of creditors, to remove prisoners from the prisons in London, Middlesex, or Surrey, if their usual residence is elsewhere.

XIII. And be it further enacted, That where it shall appear to the satisfaction of the said Court or commissioner, that any prisoner arrested within the counties of *Middlesex* or *Surrey*, or the city of *London*, or borough of *Southwark*, had, at or lately before such arrest, his or her usual place of abode in some county or place other than the said counties of *Middlesex* or *Surrey*, or the city of *London*, or the borough of *Southwark*, and hath been arrested in the said counties of *Middlesex* or *Surrey*, or the city of *London*, or borough of *Southwark*; or where any prisoner, having been arrested in any county or place other than *Middlesex*, *Surrey*, or the city of *London*, or borough of *Southwark*, shall be rendered in discharge of his bail; it shall and may be lawful for the

said Court or commissioner, upon the request and at the expense of any of his or her creditor or creditors, to order, in any of such cases, such prisoner to be taken to the gaol of the county or place where such prisoner had, at or lately before such arrest or render, his or her usual place of abode, and to be brought for hearing and examination to the assize or other town of the county, or county of the city or town, to the gaol whereof he shall have been so removed; and such expense incurred by such creditor or creditors shall be repaid to him or them by the assignee or assignees of such prisoner, out of the estate, effects, and property of such prisoner, before any dividend shall be made thereof.

Filing petition to be an act of bankruptcy.

XIV. And be it further enacted, That the filing of the petition of every person in actual custody, who shall be subject to the several statutes concerning bankrupts, or any of them, and who shall apply by petition to the said Court for his or her discharge from confinement, according to the provisions of the said recited acts or this act, or any or either of them, shall be accounted and adjudged an act of bankruptcy from the time of filing his said petition: Provided always, that no commission of bankrupt shall issue against such person upon such act of bankruptcy, after the said Court or commissioner shall have ordered such prisoner to be discharged forthwith, or at any future period, or not to be discharged until a certain period, according to the provisions of the said recited acts and this act, or either of them.

No commission of bankrupt shall issue against any prisoner after order to be discharged.

Assignees appointed before discharge of insolvent to make dividend;

XV. And be it further enacted, That where the said Court or commissioner shall, after the filing of any prisoner's petition, and before the said Court or commissioner adjudge him entitled to his discharge, appoint one or more assignee or assignees of the

estate and effects of such prisoner, and where the said Court or commissioner shall appoint one or more assignee or assignees of a prisoner of unsound mind, every such assignee or assignees, as well as such assignee or assignees as have hitherto been in such cases appointed by the said Court, shall, if the said Court or commissioner shall so direct, cause fourteen days notice to be given in the *London Gazette*, and such one or more newspaper as the said Court or commissioner shall order, of the day on which, and place where, a dividend shall be made amongst the creditors of such prisoner, who shall prove their debts before such assignee or assignees, unless such prisoner, or his or her assignee or assignees, or any other creditor of such prisoner, shall object to any such debt, in which case the same shall be examined into by the said Court or commissioner, in the manner in the said first recited act mentioned; and every such prisoner shall be thenceforth discharged from the debts of all such creditors who shall accept any such dividend, in the same manner and to the same extent as if the said Court or commissioner had declared such prisoner to be entitled to the benefit of the act, and to be discharged out of custody forthwith, and no further or otherwise; and it shall be lawful for the said Court or commissioner to make an order accordingly, specifying the debts from which such prisoner shall be so discharged.

and also assignees of a lunatic.

Notice of dividend to be given.

Acceptance of dividend a discharge.

XVI. And whereas an act passed in the third year of the reign of His present Majesty, intituled *An Act for preventing frauds upon creditors by secret warrants of attorney to confess judgment:** And whereas it is expedient to extend the provisions of such act; be it therefore enacted, That the last-mentioned act shall extend to the provisional or other assignee or as-

Provisions of 3 G. 4. c. 39. extended to assignees to insolvent.

* See Appendix.

signees of every prisoner who shall, after the expiration of twenty-one days next after his execution of such warrant of attorney, or his giving of such *cognovit actionem* as therein mentioned, apply by petition to the said Court for his or her discharge from confinement, according to the provisions of the said recited acts or either of them, as if the last-mentioned act had been expressly herein enacted; and every such warrant of attorney, and judgment and execution thereon, and every such *cognovit actionem*, and any judgment entered up thereon, and any execution taken out on such judgment, as are declared by the last-mentioned act to be fraudulent and void against the assignees under a commission of bankrupt, shall be deemed equally fraudulent and void against the provisional or other assignee or assignees of such prisoner; and such provisional or other assignee or assignees shall be entitled to recover back and receive, for the use of the creditors of such prisoner, all and every the monies levied or effects seized under or by virtue of any such judgment or execution.

Voluntary preference fraudulent and void.

XVII. And be it further enacted, That if any prisoner who shall file his petition for his discharge under the said recited acts, or either of them, shall before or after his imprisonment, being in insolvent circumstances, voluntarily convey, assign, transfer, charge, deliver, or make over any estate, real or personal, security for money, bond, bill, note, money, property, goods, or effects whatsoever, to any creditor or creditors, every such conveyance, assignment, transfer, charge, delivery, or making over, shall be deemed and is hereby declared to be fraudulent and void, as against the assignee or assignees of the estate of the said prisoner, appointed under the said acts or either of them: Provided always, that no such con-

veyance, assignment, transfer, charge, delivery, or making over, shall be so deemed fraudulent or void, unless made within three months before the filing of the said petition, or with the view or intention by the party so conveying, assigning, transferring, charging, delivering, or making over, of filing a petition for his or her discharge under the said acts or either of them.

Court may order such part of salary of officers of customs and excise as the commissioners thereof shall consent [illegible], to be applied in payment of such officers debts.

XVIII. And be it further enacted, That it shall be lawful for the said Court, or chief or other commissioner, to order such portion of the salary, pay, emoluments, or pension of any prisoner, being or having been an officer or clerk, or being or having been otherwise employed or engaged in the service of His Majesty, in the customs or excise, as on communication from the said Court or commissioner to the commissioners of the customs or excise, they may respectively consent to, in writing, to be applied in payment of the debts of such person, and for that purpose to be paid to his assignee or assignees; and such portion of the salary, pay, emoluments, or pension, as shall be specified in such order and consent, shall, upon the same being lodged with the officer or person appointed to pay or paying such salary, pay, emoluments, or pension, be paid to the assignee or assignees of such prisoner, until the said Court shall make order to the contrary.

Insolvent, entitled to lease or agreement for lease, delivering up same to assignees, shall not remain liable for rent, &c.

XIX. And be it further enacted, That in all cases in which a person shall take the benefit of the said acts, or either of them, and such person shall be entitled to any lease or agreement for a lease, and his assignee or assignees shall accept the same and the benefit thereupon, as part of the insolvent's estate and effects, the insolvent shall not be or be deemed to be liable to pay the rent accruing due after such acceptance of the same as aforesaid; and after such

acceptance the insolvent shall not be liable to be in any manner sued in respect or by reason of any subsequent non-observance or non-performance of the conditions, covenants, or agreements therein contained: Provided, that in all such cases as aforesaid, it shall be lawful for the lessor or person agreeing to make such lease, his heirs, executors, administrators, or assigns, if the assignee or assignees shall decline, upon his or their being required so to do, to determine whether he or they will or will not accept such lease or agreement for a lease, to apply to the said Court or commissioner, praying that he or they may either so accept the same, or deliver up the lease or agreement for the lease, and the possession of the premises demised or intended to be demised; and such Court or commissioner shall thereupon make such order as in all the circumstances of the case shall seem meet and just, and such order shall be binding on all parties.

Lessor may apply to Court.

XX. And be it further enacted, That wherever any creditor or creditors opposing a prisoner's discharge, shall prove to the satisfaction of the said Court or commissioner, that such prisoner, with intent to conceal the state of his affairs, or to defeat the objects of the said recited acts or this act, or either of them, has destroyed, or otherwise wilfully prevented or purposely withheld the production of any books, papers, or writings relating to such of his affairs as are subject to investigation under the said acts or either of them, or shall have kept or caused to be kept false books, or made false entries, or shall have wilfully and fraudulently altered or falsified any such books, papers, or writings, or shall in any respect have been guilty of fraud in discharging or concealing any debt due to or from the said prisoner, or shall have fraudulently made away with, charged, mortgaged, or concealed

Costs to opposing creditors, on satisfactory proof of fraud on the part of the prisoner.

any part of his or her property, of what kind soever, either before or after his or her said imprisonment, for the purpose of diminishing the sum to be divided among his or her creditors, or of giving an undue preference to any of the said creditors, the said Court shall order the taxed costs of the said opposition to be paid to such opposing creditor or creditors, out of the estate and effects of such prisoner, by his assignee or assignees, before any dividend made thereof; and in all other cases of opposition to a prisoner's discharge being substantiated or effectual, it shall be lawful for the said Court, or chief or other commissioner, to make a like order, if it shall to them or him seem fit.

One commissioner to hear matters out of Court on summons.

XXI. And be it further enacted, That it shall be lawful for the chief or any one commissioner, to hear and determine out of Court, upon summons to the proper parties, all matters and things relating to any prisoners or person discharged by any act for the relief of insolvent debtors, or to his estate, property, and effects, or his assignee or assignees thereof, except the hearing, re-hearing, or any examination of any such prisoner or person discharged; and the order made in any such behalf by such chief or other commissioner shall be of as full force and effect to all intents and purposes as if the same had been made by the said Court, unless the same shall, upon application to the said Court, at the next following sitting thereof, be by the said Court altered or rescinded.

Court may order such part of salary or pay of officers or clerks in His Majesty's service, &c. as the chief officer of the department shall consent to, to be

XXII. And be it further enacted, That it shall be lawful for the said Court, or chief or other commissioner, to order such portion of the salary, pay, emoluments, or pension of any prisoner, being or having been an officer or clerk, or being or having been otherwise employed or engaged in the service of His Majesty in any civil office, or of the court of directors

of the honourable *East India* company, or any other department whatsoever, as the said Court or chief or other commissioner may order in writing, and as upon communication with the chief officer of the department in which such insolvent may be belonging at the time, or in which he may have served, and to which such chief officer shall consent in writing, to be applied in payment of the debts of such person, and for that purpose to be paid to his assignee or assignees; and such portion of the salary, pay, emoluments, or pension, as shall be specified in such order, shall, upon the same being lodged with the officer or person appointed to pay, or paying such salary, pay, emoluments, or pension, be paid to the assignee or assignees of such prisoner, until the said Court shall make order to the contrary.

paid in payment of the debts of such persons.

XXIII. And be it further enacted, that this act shall commence and take effect upon and after the first day of *September* one thousand eight hundred and twenty-four, and continue in force until the first day of *June* one thousand eight hundred and twenty-five, and from thence until the end of the then next session of parliament.

Commencement and continuance of act.

ANNO SEPTIMO

GEORGII IV. REGIS.

CAP. LVII.

An Act to amend and consolidate the Laws for the Relief of Insolvent Debtors in England.

[26th *May*, 1826.]

WHEREAS an act was passed in the first year of the reign of his present Majesty, intituled *An Act for the Relief of Insolvent Debtors in* England, *to continue in force until the first day of* June *one thousand eight hundred and twenty-five;* and a certain other act passed in the third year of his said Majesty's reign, intituled *An Act to amend an Act of the first year of his present Majesty, for the Relief of Insolvent Debtors in* England; and a certain other act passed in the fifth year of his said Majesty's reign, intituled *An Act to amend certain Acts for the Relief of Insolvent Debtors in* England; and it is expedient to repeal the said acts, except so far as is hereinafter provided, and to make further provision for the relief of insolvent debtors; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the powers given by the said acts to the Court established by virtue of

1 G. 4. c. 119.

3 G. 4. c. 123.

5 G. 4. c. 61

Powers given by recited acts continued for

the said first recited act shall be and the same are hereby continued and vested in the Court to be continued by virtue of this act, as hereinafter provided, in so far as the same relate to or may be exercised in the matters of the petitions of any persons who shall have petitioned the said Court so established as aforesaid for relief, under the provisions of the said recited acts, before the passing of this act, or of any persons who have obtained their discharge by virtue of an act passed in the fifty-third year of his late Majesty's reign, intituled *An Act for the Relief of Insolvent Debtors in* England; and that all things shall and may be done by all persons relating to the matters of all such petitions, which such persons might have done if the said three first-recited acts had been continued by this act; and that the said three first-recited acts (except as is herein-before provided) shall be, from and after the passing of this act, repealed, and the same are hereby repealed, except as aforesaid.

the purposes herein mentioned.

53 G. 3. c. 102.

Otherwise the said acts repealed.

II. And be it further enacted, that the Court now established for the relief of insolvent debtors in *England* shall be continued, and that the several persons appointed by his Majesty to be chief and other commissioners of the said Court, shall continue to be the chief and other commissioners of the said Court so hereby continued, and to preside therein; and that it shall and may be lawful for his Majesty, from time to time, upon any vacancy in any of the said offices of chief or other commissioner, by death or otherwise, to appoint other fit and proper persons, being barristers at law of ten years standing at the least, to be such chief or other commissioners, and to preside in the said Court accordingly; and that the several persons appointed by the said Court to be chief clerk, provisional assignee, or any other officer of the said

Court now established, and commissioners and officers, to be continued.

Court, according to the provisions of the said first-recited act, shall continue to be the chief clerk, provisional assignee, and other officers of the said Court, so hereby continued; and that it shall be lawful for the said Court, from time to time, upon any vacancy in any of the said offices, by death or otherwise, to appoint other fit and proper persons to be such chief clerk, provisional assignee, and other officers; and that the said Court to be continued as aforesaid shall at all times have power to appoint such officers as the lord chancellor, and the lords chief justices of the Courts of King's Bench and Common Pleas, and the lord chief baron of the Exchequer, shall judge to be necessary, and in such manner as they shall direct.

Court to be a Court of Record.

III. And be it further enacted, that the said Court so continued as aforesaid shall be a Court of Record for the purposes of this act; and that the said Court shall cause to be made a seal of the said Court, and shall cause to be sealed therewith all such records, proceedings, documents, and copies of the same, as are herein-after expressly required to be so sealed, and such other records, proceedings, documents, and copies of the same, as the said Court shall at any time direct; and that the said Court, or any commissioner thereof, acting under the powers of this act, may adjourn any sitting of the said Court or commissioner, as may be requisite, and may administer oaths, and examine all parties and witnesses upon oath, for the purposes of this act, and shall have such like and the same powers of compelling the attendance of witnesses, both before the said Court, and before any commissioner thereof, acting as aforesaid, and before an officer of the Court or examiner, as herein-after mentioned, and before such justices as

Seal of the Court.

Powers of Court and Commissioners.

are herein-after mentioned, and of requiring and compelling the production of books and writings, as are now possessed by any of the superior courts at *Westminster*, and to order any prisoner who shall have petitioned for relief under this act, or any prisoner who shall be a necessary and material witness in any matter pending in the said Court, to be brought before the said Court or commissioner, or officer or examiner, or justices, as often as shall be requisite; and that the said Court, or any commissioner thereof, acting as aforesaid, shall have the power of committing all persons guilty of any contempt of the said Court to the prison of the King's Bench, or to the common gaol of any county in which such person shall be or shall usually reside; and that the said Court shall have the power of fining in a summary way, or removing any of the officers of the said Court, who shall be guilty of any negligence, wilful or unnecessary delay, or other misconduct whatsoever: provided always, that the said Court, or any commissioner thereof, shall not have the power of awarding costs against any person or persons whomsoever, except in such cases only where such costs are herein-after expressly mentioned and permitted to be awarded by this act; and that nothing herein contained shall extend to the compelling the attendance of any witness, unless the party on whose behalf such witness shall be required to attend shall have previously tendered to such witness such allowance for expences for his attendance as in the judgment of the said Court, or of a commissioner thereof, shall appear to be reasonable.

Court to sit at the Court House in Portugal Street, and elsewhere, if necessary.

IV. And be it enacted, that all proceedings and matters to be heard by the said Court shall be heard and determined by the said Court at the Court House

of the said Court in *Portugal Street*, *Lincoln's Inn Fields*, unless the said Court shall at any time see cause to appoint its sittings in any other place, and shall appoint the same accordingly, which it is hereby empowered to do; and that it shall be lawful for any one commissioner to hear and determine out of Court, upon summons to the proper parties, all matters and things relating to any person who shall have petitioned the said Court for relief under this act, or to his or her estate, property, and effects, or the assignee or assignees thereof, except the hearing, re-hearing, or any examination of any such person; and the order made in any such behalf by such commissioner shall be of as full force and effect, to all intents and purposes, as if the same had been made by the said Court, unless the same shall, upon application to the said Court at the next following sitting thereof, be by the said Court altered or rescinded.

One commissioner may hear matters out of Court upon summons.

Court to sit twice a week.

V. And be it enacted, that the said Court shall sit for the dispatch of business twice at least in every week throughout the year, and one or more of the said commissioners shall attend for that purpose: provided nevertheless, that from and after the expiration of six weeks from the last day of *Trinity* term until the first day of *November* in every year, the said Court shall have full power and authority to regulate and appoint the sittings of the said Court, at such times as to the said Court shall appear fit and necessary for the due administration of justice in the said Court; and that no adjournment of the said Court, during the period aforesaid, shall be at any time for more than six weeks.

Power to regulate sittings otherwise during certain periods.

Commissioners to make circuits.

VI. And be it enacted, that three of the said commissioners shall from time to time severally make circuits, and give their attendance at the several assize

or other towns or places, at which any prisoner or prisoners shall be ordered to appear, as herein-after provided; and that upon the hearing of the matters of any such prisoner's petition by such commissioner on his circuit, it shall and may be lawful for such commissioner to make all such orders, and to give all such directions, and to do all such matters and things requisite for the discharging or remanding of such prisoner, and for the assignment and application of the estate and effects of such prisoner, and otherwise respecting such prisoner, and his or her petition and schedule, and his or her creditors and assignees, as the said Court for the relief of insolvent debtors may make, give, or do in the matters of petitions heard by the said Court, according to this act; and that in each and every matter to be heard and inquired into by such commissioner, according to the provisions of this act, such commissioner shall have the same power as the said Court would have therein if the same were heard and inquired into by the said Court; and that all judgments, rules, orders, directions, and proceedings, pronounced, made, and done in all and every the matters aforesaid, by such commissioners, shall be transmitted to the said Court, signed by such commissioner, to be a record of the said Court, and to be kept as such among the records thereof.

Power of commissioner on circuit.

VII. And be it further enacted, that the said circuits shall be made three times in each year, if requisite, and that the time and manner of making the same, and the officers necessary to attend the commissioners thereupon, shall be regulated in such manner as shall be appointed by the commissioners of the said Court, with the approbation of one of his Majesty's principal secretaries of state for the time being; and that it shall and may be lawful for the

Time and manner of making circuits.

Travelling expences to be paid by the Treasury.

lord high treasurer or lords commissioners of his Majesty's treasury of the united kingdom of *Great Britain* and *Ireland* for the time being, to direct that such sum or sums shall be paid as may appear fit and necessary for the defraying the travelling expences of such commissioners and officers, in execution of their duties under this act; and that during the said circuits one of the said commissioners shall be attendant and presiding in the said Court: provided always, that if on any particular occasion the said commissioners shall be of opinion that it would be expedient that all the said commissioners should be absent from the said Court on circuits, in different places at the same time, it shall and may be lawful to and for such commissioners to state such opinion, together with the grounds and reasons thereof, in writing, to one of his Majesty's principal secretaries of state for the time being; and thereupon, if such secretary of state shall approve thereof, and such approval shall be notified in writing to such commissioners by such secretary of state, it shall and may be lawful to and for all the said commissioners to be so absent from the said Court as aforesaid, at the same time in such places respectively as shall be so stated and approved, and for that purpose to adjourn the said Court for such time as shall be approved in and by such notification.

One commissioner to remain in London.

Proviso for all commissioners to be on circuit, if necessary.

VIII. And be it enacted, that the said Court shall cause notice of the time and place or places of the attendance of such commissioner in each assize, or other town or place, according to this act, to be given in the *London Gazette*, and in some public journal or newspaper circulated in the county wherein such town or place is situate, once in each of the two weeks immediately preceding the time ap-

Time of circuits to be advertised.

pointed for such attendance: provided always, that if on the day appointed for such attendance such commissioner shall not attend at the court house or other place appointed for such attendance, then and in every such case the court to be held by such commissioners shall be considered as adjourned to the ensuing day, not being a *Sunday*; and if the ensuing day should be a *Sunday*, then to the next day, *Monday*, and so on from day to day, until the said commissioner shall give his attendance; and that all persons summoned or bound, or having occasion to attend such court, shall thereupon be bound to attend the same, according to every such adjournment, in the same manner in all respects as if the said commissioner had regularly sat and so adjourned the said Court; and that when such commissioner shall so give his attendance, he shall proceed to dispatch the business of the said Court in the same manner in all respects as if he had regularly sat, and had himself made such adjournment or adjournments of the same; and that he shall thereupon without delay state in writing the reason or cause which prevented his attendance on the day appointed for such attendance, and shall subscribe such statement, and shall send the same forthwith by his Majesty's post to one of his Majesty's principal secretaries of state.

Commissioner not arriving, Court to stand adjourned.

Cause of non-arrival to be signified to secretary of state.

IX. And be it enacted, that no fee or gratuity shall be received or taken by the said Court, or any officer thereof, of or from any person whomsoever, on any pretence whatsoever, except such fees as shall at any time be specified in a list thereof to be signed by the commissioners of the said Court, a copy of which list shall always be exposed to view in the office of the said Court.

No fees to be taken, except such as shall be established.

X. And be it enacted, that from and after the

Persons imprisoned for debt

may apply the Court in a summary way for discharge.

passing of this act it shall be lawful for any person who shall be in actual custody, within the walls of any prison in that part of the united kingdom called *England*, upon any process whatsoever, for or by reason of any debt, damage, costs, sum or sums of money, or for or by reason of any contempt of any court whatsoever for non-payment of any sum or sums of money, or of costs taxed or untaxed, either ordered to be paid, or to the payment of which such person would be liable in purging such contempt, or in any manner in consequence or by reason of such contempt, at any time within the space of fourteen days next after the commencement of the actual custody of such prisoner, whether such commencement shall have been in the same prison, or in any other prison, or the rules or liberties of any prison; or afterwards, if the said Court shall in any case think reasonable to permit the same, to apply by petition in a summary way to the said Court, for his or her discharge from such custody, according to the provisions of this act; and in such petition shall be stated the time and place of the first arrest of such prisoner, in the cause or causes wherein he or she shall then be detained, and the time of his or her commitment to the prison where he or she shall then be confined; and if such prisoner shall not have been in the same custody from the time of such first arrest, then the means and manner by which the change of custody of such prisoner has taken place, and also the name or names of the person or persons at whose suit or prosecution such prisoner shall at the time of presenting such petition be detained in custody, and the amount of the debt or debts, sum or sums of money, and of such costs as aforesaid, so far as the amount of such costs is ascertained, for which he or she shall be so detained; and it shall also be stated,

Time of petitioning.

What shall be stated in the petition.

whether such prisoner has at any prior time, and when, petitioned the said Court, or any other court, for his or her discharge, under any act for the relief of insolvent debtors, or under an act passed in the thirty-second year of the reign of his late Majesty King *George* the Second intituled *An Act for the relief of debtors with respect to the imprisonment of their persons, and to oblige debtors who shall continue in execution in prison beyond a certain time, and for sums not exceeding what are mentioned in the act, to make discovery of, and deliver upon oath their estates for the creditors benefit;* and whether such prisoner has or has not obtained any such discharge, in pursuance of any such petition, and whether such prisoner has at any prior time been declared a bankrupt, and in such case, whether such prisoner has obtained his or her certificate; and such prisoner shall in such petition state whether such prisoner has given notice to the keeper of the gaol or prison in which he or she shall be confined, of his or her intention to present the said petition, which notice the said prisoner is hereby required to give in writing to the keeper of such gaol or prison; and such prisoner shall in such petition pray to be discharged from custody, and to have future liberty of his or her person, against the demands for which such prisoner shall be then in custody, and against the demands of all other persons who shall be or claim to be creditors of such prisoner at the time of presenting such petition; which petition shall be subscribed by the said prisoner, and shall forthwith be filed in the said Court.

32 G. 2. c. 28.

Petition to be signed and filed.

XI. And be it further enacted, that such prisoner shall, at the time of subscribing the said petition, duly execute a conveyance and assignment to the provisional assignee of the said Court, in such form as

Prisoner at the time of petitioning to make assignment of estate and effects, ex-

cept wearing apparel, &c. not exceeding 20*l.*; and of future estate; is to this act annexed, of all the estate, right, title, interest, and trust of such prisoner, in and to all the real and personal estate and effects of such prisoner, both within this realm and abroad, except the wearing apparel, bedding, and other such necessaries of such person, and his or her family, and the working tools and implements of such prisoner, not exceeding in the whole the value of twenty pounds, and of all future estate, right, title, interest, and trust of such prisoner, in or to any real and personal estate and effects, within this realm or abroad which such prisoner may purchase, or which may revert, descend, be devised or bequeathed, or come to him or her, before he or she shall become entitled to his or her final discharge in pursuance of this act, according to the adjudication made in that behalf; or in case such prisoner shall obtain his or her discharge from custody without any adjudication being made in the matter of his or her petition, then before such prisoner shall be at large and out of custody, and of all debts due or growing due to such prisoner, or to be due to him or her before such discharge as aforesaid; which conveyance and assignment, so executed as aforesaid, in form aforesaid, shall vest all the real and personal estate and effects of such prisoner, and all such future real and personal estate and effects as aforesaid, of every nature and kind whatsoever, and all such debts as aforesaid, in the said provisional assignee; and the same shall be made subject to a proviso, that in case the petition of any such prisoner shall be dismissed by the said Court, such conveyance and assignment shall, from and after such dismission, be null and void to all intents and purposes; and the said Court is hereby empowered to dismiss any such petition in the matter whereof a final adjudication shall not have been made in pursuance of this act, at any time when

and of debts.

Proviso for assignment to be void, if petition dismissed.

Power to dismiss petition.

it shall seem fit to the said Court to dismiss the same: provided always, that where in any case, by leave of the said Court, any amendment shall be made in any such petition, or an amended petition shall be filed as of the date of the original petition, which the said Court is hereby empowered to do and authorize without dismissing such original petition, the assignment and conveyance executed in such case shall not thereby be affected, but shall stand good to all intents and purposes, notwithstanding such amendment or amended petition so filed as aforesaid.

Act only to extend to prisoners within the walls;

XII. Provided always, and be it enacted, that this act shall not extend to any person who shall not be at the time of filing his or her petition, and during all the proceedings thereon, in actual custody within the walls of the prison, without any intermission of such imprisonment by leave of any Court or otherwise: provided always, that if after any such prisoner shall have obtained an order for hearing the matters of his or her petition, it shall appear, to the satisfaction of the said Court, by the oath or affidavit of a physician, surgeon, or apothecary, and such other evidence as the said Court may require, that such prisoner cannot continue to reside within the walls of any such prison without serious injury to the health of such prisoner, or that, for the sake of the health of the prisoners in general, it is necessary that the number thereof within the walls of any such prison should be reduced, it shall be lawful for the said Court to dispense with such actual custody of any such prisoner within the walls, as is herein-before mentioned: provided nevertheless, that if any such prisoner, having obtained such dispensation, shall go beyond the rules and liberties in which he or she shall in pursuance thereof be confined, such prisoner shall thereby be deprived of all benefit of this act.

except in certain cases.

Filing petition an act of bankruptcy, if acted upon within a certain time; in which case assignment avoided.

XIII. And be it further enacted, that the filing of the petition of every person in actual custody, who shall be subject to the laws concerning bankrupts, and who shall apply by petition to the said Court for his or her discharge from custody, according to this act, shall be accounted and adjudged an act of bankruptcy from the time of filing such petition; and that any commission issuing against such person, and under which he or she shall be declared bankrupt before the time appointed by the said Court, and advertised in the *London Gazette*, for hearing the matters of such petition, or at any time within two calendar months from the time of filing such petition, shall have effect to avoid any conveyance and assignment of the estate and effects of such person, which shall have been made in pursuance of the provisions of this act: provided always, that the filing of such petition shall not be deemed an act of bankruptcy, unless such person be so declared bankrupt before the time so advertised as aforesaid, or within such two calendar months as aforesaid; but that every such conveyance and assignment shall be good and valid, notwithstanding any commission of bankrupt under which such person shall be declared bankrupt after the time so advertised as aforesaid, and after the expiration of such two calendar months as aforesaid.

Assignment to be filed, although avoided by commission of bankruptcy;

XIV. Provided always, and be it enacted, that where the conveyance and assignment executed by any such prisoner to the provisional assignee of the said Court, in pursuance of the provisions of this act, shall be or become void by reason of such prisoner being declared bankrupt within such period as above-mentioned, or being an uncertificated bankrupt at the time of such execution, the said conveyance and assignment shall nevertheless, together with the peti-

tion of such prisoner, remain of record in the said Court; and the said Court shall and may require such prisoner to file his or her schedule, and shall and may cause all things to be done in order to the hearing of the matters of such petition, and of all oppositions to be made to his or her discharge, and such hearing shall and may be proceeded in, and all things be done thereupon as in other cases, according to this act; and the said Court shall and may, at any time when it shall seem fit, appoint other assignee or assignees in such case in the same manner as in other cases; and that if at any time after the execution of the said conveyance and assignment by such prisoner, he or she shall obtain his or her certificate under any such commission of bankrupt, the rights, powers, title, and interest of the provisional assignee, and other assignee or assignees, appointed under this act, in, over, and respecting any property, real or personal, whatsoever, remaining to such prisoner after the obtaining of such certificate, or thereafter in any way coming to him or her, and under or in pursuance of the warrant of attorney to be executed by such prisoner under the provisions of this act, shall from and after the obtaining of such certificate be the same as if the conveyance and assignment executed by such prisoner under this act had been valid at the time of the execution thereof: provided always, that nothing herein contained shall be construed to affect the title, rights, and interests of the assignees under any such commission of bankrupt, or to alter or diminish the effect of any such certificate as aforesaid, but that the title, rights, and interests of such last-mentioned assignees, and the benefit of such certificate to such prisoner, shall be the same to all intents and purposes as if this act had not been made.

and court shall proceed to hear and adjudicate as in other cases.

If insolvent obtains certificate, rights of assignees afterwards to be the same as in other cases.

Not to affect title of assignees of bankrupt, or operation of certificate.

Prisoner petitioning not to be discharged for want of plaintiff proceeding in his action.

XV. And be it further enacted, that no prisoner who shall have so petitioned the said Court for relief under this act shall, after the filing of his or her petition, be discharged out of custody, as to any action, suit, or process for or concerning any debt, sum of money, damages, or claim, with respect to which an adjudication in the matter of such petition can, under the provisions of this act, be made by or by virtue of any supersedeas, judgment of non-pros, or judgment as in the case of a nonsuit, for want of the plaintiff or plaintiffs in such action, suit, or process proceeding therein.

Provisional assignee to take possession of estates, &c. conveyed to him, and sell the same if the Court directs;

XVI. And be it further enacted, that it shall and may be lawful for the provisional assignee of the said Court to take possession himself, or by means of a messenger of the said Court, or other person or persons appointed by him, of all the real and personal estate and effects of every such prisoner as shall subscribe such petition, and execute such conveyance and assignment as aforesaid; and if the said Court shall so order, to sell or otherwise dispose of such goods, chattels, and personal estate, or any part thereof, and of the real estate of such prisoner, according to the provisions hereinafter made with regard to the sale of such real estate, and out of the proceeds of such real and personal estate to defray in the first place all such costs and expences of taking possession or of seizing and selling the same, as shall be allowed by the said Court, and to account for the produce of such sale or disposition to the said Court; and it shall be lawful for the said provisional assignee to sue in his own name, if the said Court shall so order, for the recovering, obtaining, and enforcing of any estate, debts, effects, or rights of any such prisoner; and all and every the real and personal estate, money and

paying the expences out of proceeds;

to sue in his own name, if Court directs.

Property vested in him to go

effects, vested in or possessed by such provisional assignee, by virtue of such conveyances and assignments so to be made by such prisoners as aforesaid, shall not remain in him if he shall resign or be removed from his office, nor in his heirs, executors, or administrators in case of his death, but shall in every such case go to and be vested in his successor in office, appointed by the said Court as aforesaid.

to his successor in office.

XVII. And be it further enacted, that the said Court may order and direct such provisional assignee as aforesaid, or such assignee or assignees as are herein-after mentioned, to pay to any such prisoner, out of his or her estate and effects, such allowance for his or her support and maintenance during such prisoner's imprisonment, and previous to the adjudication in the matter of his or her petition, as to the said Court shall seem reasonable and fit.

Court may order an allowance to prisoner during his confinement.

XVIII. Provided always, and be it enacted, that in case of the dismission of the petition of any such prisoner seeking relief under this act, all the acts done before such dismission by the said provisional assignee, or other assignee or assignees, appointed as hereinafter provided, or other person or persons acting under his or their authority, according to the provisions of this act, shall be good and valid; and that in such case, or in case the conveyance and assignment made by such prisoner as aforesaid shall be avoided by any commission of bankrupt thereafter issuing against such prisoner, as herein-before provided, no action or suit shall be commenced against such provisional assignee, nor against any assignee or assignees appointed under this act, nor against any person duly acting under his or their authority, except to recover any property, estate, money, or effects of such prisoner, detained after an order made by the said

Where petition is dismissed, acts of assignees valid.

No action to be brought against them where assignment avoided:

Court for the delivery thereof, and demand made thereupon.

Court may appoint assignees

XIX. And be it further enacted, that it shall and may be lawful for the said Court, at any time after the filing of the petition of any such prisoner as aforesaid, as to the said Court shall seem expedient, to appoint a proper person or persons, being a creditor or creditors of such prisoner, to be assignee or assignees of the estate and effects of such prisoner, for the purposes of this act; and when such assignee or assignees shall have signified to the said Court his or their acceptance of the said appointment, the estate, effects, rights, and powers of such prisoner, vested in such provisional assignee as aforesaid, shall immediately be conveyed and assigned by such provisional assignee to the said assignee or assignees, in trust for the benefit of such assignee or assignees, and the rest of the creditors of such prisoner, in respect of or in proportion to their respective debts, according to the provisions of this act; and after such conveyance and assignment by such provisional assignee, all the estate and effects of such prisoner shall be to all intents and purposes as effectually and legally vested by relation in such assignee or assignees, as if the said conveyance and assignment had been made by such prisoner to him or them: provided nevertheless, that no act done under or by virtue of such first conveyance and assignment shall be thereby rendered void or defeated, but shall remain as valid as if no such relation had taken place; and that every such conveyance and assignment as aforesaid to such provisional assignee, and a counterpart of every such conveyance and assignment by such provisional assignee to such other assignee or assignees, shall be filed of record in the said Court; and a copy of any such record, made up-

Their acceptance to be signified to the Court.

Assignment to them, by provisional assignee, to vest estate, &c.

What shall be evidence of assignment.

on parchment, and purporting to have the certificate of the provisional assignee of the said Court, or his deputy, appointed for that purpose, endorsed thereon, and to be sealed with the seal of the said Court, shall be recognised and received as sufficient evidence of such conveyance and assignment, and of the title of the provisional and other assignee or other assignees under the same, in all courts, and before commissioners of bankrupt and justices of the peace, to all intents and purposes, without any proof whatever given of the same, or of any other proceeding in the said Court, in the matter of such prisoner's petition.

Sale of estate and effects to be made immediately.

XX. And be it further enacted, that the assignee or assignees of the estate and effects of any such prisoner shall, with all convenient speed, after his or their accepting such conveyance and assignment as aforesaid, use his or their best endeavours to receive and get in the estate and effects of such prisoner, and shall, with all convenient speed, make sale of all such estate and effects; and if such prisoner shall be interested in or entitled to any real estate, either in possession, reversion, or expectancy, such real estate, within the space of six months after the conveyance and assignment made to such assignee or assignees in that behalf, or within such other time as the said Court shall direct, shall be sold by public auction, in such manner, and at such place or places, as shall thirty days before any such sale be approved, in writing under their hands, by the major part in value of the creditors of such prisoner entitled to the benefit thereof, who shall meet together on notice of such meeting, published fourteen days previous thereto in the *London Gazette*, and also in some daily newspaper, printed and published in *London*, or within the bills of mortality, if the prisoner before his or her

Creditors to meet 30 days before sale of real estate.

Meeting to be advertised.

going to prison resided in *London*, or within the bills of mortality, and if such prisoner resided elsewhere within the united kingdom, then in some printed newspaper which shall be generally circulated in or near the place where such prisoner resided at the time aforesaid; and in case such prisoner shall be entitled to any copyhold or customary estate, the conveyance and assignment by such provisional assignee to such assignee or assignees as aforesaid shall be entered on the court rolls of the manor of which such copyhold or customary estate shall be holden; and thereupon it shall be lawful for such assignee or assignees to surrender or convey such copyhold or customary estate to any purchaser or purchasers of the same, from such assignee or assignees as the said Court shall direct; and the rents and profits thereof shall be in the mean time received by such assignee or assignees for the benefit of the creditors of such prisoner, without prejudice nevertheless to the lord or lords of the manor of which any such copyhold or customary estate shall be holden.

Assignee may surrender or convey copyhold or customary estate.

XXI. And whereas persons petitioning the said Court for relief under this act may be entitled to annuities for their own lives, or other uncertain interests, or to reversionary or contingent interests, or to property under such circumstances that the immediate sale thereof for payment of their debts may be very prejudicial to them, and deprive them of the means of subsistence which they might otherwise have, after payment of their debts; and it may be proper in some cases to authorize the raising of money by way of mortgage for payment of the debts, or part of the debts of such person, instead of selling the property of such person for that purpose; be it enacted, that in all such cases it shall be lawful for the said Court to

Discretion in Court as to the disposal of property in certain cases.

take into consideration all circumstances affecting the property of any such person; and if it shall appear to the said Court that it would be reasonable to make any special order touching the same, it shall be lawful for the said Court so to do, and to direct that such property as it may be expedient not to sell, or not to sell immediately, according to the provisions of this act, shall not be so sold, and from time to time to order and direct in what manner such property shall be managed for the benefit of the creditors of such person, until the same can be properly sold, or until payment of all such creditors, according to the provisions of this act, shall have been made, and to make such orders touching the sale or disposition of such property as to the said Court shall seem reasonable, considering the rights of the creditors of such person to payment of their demands, and the future benefit of such person, after payment of his or her debts, and upon such terms and conditions, with respect to the allowance of interest on debts not bearing interest, or other circumstances, as to the said Court shall seem just; and if it shall appear to the said Court that the debts of such person can be discharged by means of money raised by way of mortgage on any property of such person, instead of raising the same by sale, it shall be lawful for the said Court so to order, and to give all necessary directions for such purpose, and generally to direct all things which may be proper for the discharge of the debts of such person, in such manner as may be most consistent with the interests of such person, in any surplus of his or her effects after payment of such debts.

Property may be morgaged, if more beneficial.

XXII. And whereas many persons who may petition the said Court for relief under this act may be seised and possessed of lands, tenements, and here-

Assignees may execute powers which insolvent might have executed for his own benefit.

ditaments, to hold for the term of their natural lives; with power of granting leases and taking fines, reserving small rents on such estate, for one, two, or three lives in possession or reversion, or for some number of years determinable upon lives, or have powers over such real or personal estate which such persons could execute for their own advantage, and which said powers ought on such persons petitioning the said Court for relief under this act to be executed for the benefit of the creditors of such persons; be it therefore enacted, that in every such case all and every the powers of leasing such lands, tenements, and hereditaments, and all other such powers as aforesaid, over such real or personal estates, which are or shall be vested in any prisoner who shall petition the said Court for relief under this act, and all trusts or powers whatever vested in such prisoner, or created for his or her use or benefit, which such prisoner might legally execute for his or her own benefit, (except the right of nomination to any vacant ecclesiastical benefice), shall be and are hereby vested in the assignee or assignees of the real and personal estate of such prisoner, by virtue of this act, so far as such prisoner could by law vest such power in any person to whom he or she might lawfully have conveyed such property, to be by such assignee or assignees executed for the benefit of all and every the creditors of such prisoner under this act.

Where lease accepted by assignees, insolvent not to remain liable for subsequent rent.

XXIII. And be it further enacted, that in all cases in which any such prisoner so petitioning the said Court as aforesaid shall be entitled to any lease or agreement for a lease, and his assignee or assignees shall accept the same, and the benefit thereof, as part of such prisoner's estate and effects, the said prisoners shall not be or be deemed to be liable to pay any sub-

sequent rent to which his or her discharge, adjudicated according to this act, may not apply, nor be in any manner sued after such acceptance in respect or by reason of any subsequent non-observance or non-performance of the conditions, covenants, or agreements therein contained: provided, that in all such cases as aforesaid it shall be lawful for the lessor, or person agreeing to make such lease, his heirs, executors, administrators, or assigns, if the said assignee or assignees shall decline, upon his or their being required so to do, to determine whether he or they will or will not accept such lease or agreement for a lease, to apply to the said Court, praying that he or they may either so accept the same, or deliver up such lease or agreement for a lease, and the possession of the premises demised or intended to be demised; and the said Court shall thereupon make such order as in all the circumstances of the case shall seem meet and just, and such order shall be binding on all parties.

Assignees not determining whether to accept lease, lessor may apply to the Court.

XXIV. And be it further enacted, that it shall and may be lawful for the assignee or assignees of any such prisoner, and such assignee or assignees is and are hereby empowered to sue from time to time, as there may be occasion, in his or their own name or names, for the recovery, obtaining, and enforcing of any estate, effects, or rights of such prisoner, but in trust for the benefit of such assignee or assignees, and the rest of the creditors of such prisoner, according to the provisions of this act; and to give such discharge and discharges to any person or persons who shall be respectively indebted to such prisoner, as may be requisite; and to make compositions with any debtors or accountants to such prisoner, where the same shall appear necessary; and to take such reasonable part of any such debts as can upon such composition be gotten

Assignees may sue in their own names;

may make composition for debts;

may submit differences to arbitration.

in full discharge of such debts;

such assignee or assignees, and any person or persons, for or on account or by reason of any matter, cause, or thing relating to the estate and effects of such prisoner: provided nevertheless, that no such composition, or submission to arbitration, shall be made, nor any suit in equity be commenced by any such assignee or assignees, without the consent in writing of the major part in value of the creditors of such prisoner, who shall meet together pursuant to a notice of such meeting, to be published at least fourteen days before such meeting in the *London Gazette*, and also in some newspaper most usually circulated in the neighbourhood of the place where such prisoner had his or her last usual residence before his or her imprisonment as aforesaid, nor without the approbation of the said Court, or of one of the commissioners thereof.

Proviso for consent of creditors to compositions and arbitrations.

Creditors to vote according to balance due to them, on account fairly stated.

XXV. And be it further enacted, that in all matters wherein creditors shall vote, or wherein the assent or dissent of creditors shall be exercised in pursuance of or in carrying into effect this act, every creditor shall be accounted such in respect of such amount only as upon an account fairly stated between the parties, after allowing the value of mortgaged property, and other such available securities and liens, shall appear to be the balance due; and that all disputes arising in such matters concerning any such amount shall upon application duly made in that behalf be examined into by the said Court, or any commissioner thereof on his circuit, who shall have power to determine the same, and if it seem fit, to refer the examination thereof to an officer of the said Court, or to an examiner duly appointed in pursuance of this act; provided always, that the amount in respect of

which any such creditor shall vote in any such matter shall not be conclusive of the amount of his or her debt for any ulterior purposes, in pursuance of the provisions of this act.

Suits not to be abated by death or removal of assignees.

XXVI. And be it further enacted, that whenever any such assignee or assignees shall die or be removed, or a new assignee or assignees shall be appointed, in pursuance of the provisions of this act, no action at law or suit in equity shall be thereby abated, but the Court in which any action or suit is depending may, upon the suggestion of such death or removal, and new appointment, allow the name or names of the surviving or new assignee or assignees to be substituted in the place of the former; and such action or suit shall be prosecuted in the name or names of the said surviving or new assignee or assignees, in the same manner as if he or they had originally commenced the same.

Where prisoner beneficially entitled to stock, Court may order transfer.

XXVII. And be it enacted, that if any person so petitioning the said Court as aforesaid shall, at the time of filing such petition, or at any time before he or she shall become entitled to his or her final discharge, according to this act, have any government stocks, funds, or annuities, or any of the stock of any public company, either in *England*, *Scotland*, or *Ireland*, standing in his own name in his own right, it shall be lawful for the said Court, whenever it shall deem fit so to do, to order all persons whose act or consent is thereto necessary to transfer the same into the name of such assignee or assignees as aforesaid; and all such persons whose act or consent is so necessary as aforesaid are hereby indemnified for all things done or permitted pursuant to such order.

Assignee's power not to extend to the

XXVIII. Provided always, and be it further enacted, that nothing in this act contained shall extend to

Income of a benefice or curacy. entitle the assignee or assignees of the estate and effects of any such prisoner, being a beneficed clergyman or curate, to the income of such benefice or curacy, for the purposes of this act: provided always nevertheless, that it shall be lawful for such assignee or assignees to apply for and obtain a sequestration of the profit of any such benefice, for the payment of the debts of such prisoner; and the order of adjudication made in the matter of such prisoner's petition, in pursuance of this act, shall be a sufficient warrant for the granting of such sequestration, without any writ or other proceedings to authorize the same; and such sequestration shall accordingly be issued, as the same might have been issued upon any writ of levari facias, founded upon any judgment against such prisoner.

Sequestration of profit of benefice may be obtained.

Assignees' power not to extend to the pay or pension of naval, military, or civil officers.

XXIX. Provided always, and be it further enacted, that nothing in this act contained shall extend to entitle the assignee or assignees of the estate and effects of any such prisoner, being or having been an officer of the army or navy, or an officer or clerk, or otherwise employed or engaged in the service of His Majesty, in the customs or excise, or any civil office, or other department whatsoever, or being or having been in the naval or military service of the *East India* company, or any officer or clerk, or otherwise employed or engaged in the service of the court of directors of the said company, or being otherwise in the enjoyment of any pension whatever, under any department of His Majesty's government, or from the said court of directors, to the pay, half-pay, salary, emoluments, or pension of any such prisoner, for the purposes of this act: provided always nevertheless, that it shall be lawful for the said Court to order such portion of the pay, half-pay, salary, emoluments, or pension of

Portion of pay or pension may be obtained on application.

any such prisoner, as on communication from the said Court to the secretary at war, or the lords commissioners of the admiralty, or the commissioners of the customs or excise, or the chief officer of the department to which such prisoner may belong or have belonged, under which such pay, half-pay, salary, emoluments, or pension may be enjoyed by such prisoner, or the said court of directors, he or they may respectively, under his or their hands, or under the hand of his or their chief secretary, or other chief officer for the time being, consent to in writing to be paid to such assignee or assignees, in order that the same may be applied in payment of the debts of such prisoner; and such order and consent being lodged in the office of the paymaster of His Majesty's forces, or of the treasurer of the navy, or of the secretary of the said court of directors, or of any other officer or person appointed to pay, or paying, any such pay, half-pay, salary, emoluments, or pension, such portion of the said pay, half-pay, salary, emoluments, or pension, as shall be specified in such order and consent, shall be paid to the said assignee or assignees, until the said Court shall make order to the contrary.

XXX. And be it enacted, that if any person who shall petition the said Court for his or her discharge from imprisonment, under this act, shall, at the time of his or her arrest, or other commencement of such imprisonment, by the consent and permission of the true owner thereof, have in his or her possession, order, or disposition, any goods or chattels whereof such prisoner was reputed owner, or whereof he or she had taken upon him or her the sale, alteration, or disposition, as owner, the same shall be deemed to be the property of such prisoner so petitioning, so as to

Goods in possession of prisoner, whereof he was reputed owner, to be deemed his property.

become vested in the provisional assignee of the said Court by the conveyance and assignment executed in pursuance of this act; provided that no transfer or assignment of any ship or vessel, or any share thereof, made as a security for any debt or debts, either by way of mortgage or assignment, duly registered according to the provisions of an act made in the fourth year of the reign of His present Majesty, intituled *An Act for the registering of vessels*, or according to the provisions of an act made in the sixth year of His said Majesty's reign, intituled *An Act for the registering of British vessels*, shall be invalidated or affected by reason of such possession, order, or disposition of the same as aforesaid.

No assignment of vessels under 4 G. 4. c. 41. or 6 G. 4. c. 110. to be affected.

XXXI. And be it enacted, that no distress or distresses for rent made and levied after the arrest or other commencement of the imprisonment of any person who shall petition the said Court for his or her discharge from such imprisonment, according to this act, upon the goods or effects of any such person, shall be available for more than one year's rent accrued prior to the execution of the conveyance and assignment by such person, in pursuance of this act, but that the landlord or party to whom the rent shall be due shall and may be a creditor for the overplus of the rent due, and for which the distress shall not be available, and entitled to all the provisions made for creditors by this act.

Distress not to be available for more than one year's rent.

XXXII. And be it further enacted, that if any prisoner who shall file his or her petition for his or her discharge under this act, shall, before or after his or her imprisonment, being in insolvent circumstances, voluntarily convey, assign, transfer, charge, deliver, or make over any estate real or personal, security for money, bond, bill, note, money, property, goods, or

Voluntary preference fraudulent and void, as against assignees.

effects whatsoever, to any creditor or creditors, or to any person or persons in trust for, or to or for the use, benefit, or advantage of any creditor or creditors, every such conveyance, assignment, transfer, charge, delivery, and making over, shall be deemed and is hereby declared to be fraudulent and void, as against the provisional or other assignee or assignees of such prisoner appointed under this act: provided always, that no such conveyance, assignment, transfer, charge, delivery, or making over, shall be so deemed fraudulent and void, unless made within three months before the commencement of such imprisonment, or with the view or intention by the party so conveying, assigning, transferring, charging, delivering, or making over, of petitioning the said Court for his or her discharge from custody under this act.

Provisions of 3 G. 4. c. 39. extended to the assignees of insolvents.

XXXIII. And whereas an act passed in the third year of the reign of His present Majesty, intituled *An Act for preventing frauds upon creditors by secret warrants of attorney to confess judgment*: and whereas it is expedient to extend the provisions of such act; be it therefore enacted, that the last-mentioned act shall extend to the provisional or other assignee or assignees of every prisoner who shall after the expiration of twenty-one days next after his or her execution of such warrant of attorney, or giving of such cognovit actionem as therein mentioned, apply by petition to the said Court for his or her discharge from confinement, according to the provisions of this act, as if the last mentioned act had been expressly herein enacted; and every such warrant of attorney, and judgment and execution thereon, and every such cognovit actionem, and judgment entered up thereon, and execution taken out on such judgment, as are declared by the last-mentioned act to be fraudulent and void against the assig-

nees mentioned therein, shall be deemed equally fraudulent and void against the provisional or other assignee or assignees of such prisoner, appointed under this act, and such provisional or other assignee or assignees shall be entitled to recover back and receive, for the use of the creditors of such prisoner, all and every the monies levied and effects seized under or by virtue of any such judgment or execution.

Warrant of attorney and cognovit actionem not to be acted upon against goods of insolvent after his imprisonment.

XXXIV. And be it further enacted, that in all cases where any prisoner who shall petition the said Court for relief under this act, shall have executed any warrant of attorney to confess judgment, or shall have given any cognovit actionem, whether for a valuable consideration or otherwise, no person shall, after the commencement of the imprisonment of such prisoner, avail himself or herself of any execution issued or to be issued upon any judgment obtained or to be obtained upon such warrant of attorney or cognovit actionem, either by seizure and sale of the property of such prisoner, or any part thereof, or by sale of such property theretofore seized, or any part thereof, but that any person or persons to whom any sum or sums of money shall be due in respect of any such warrant of attorney or cognovit actionem, shall and may be a creditor or creditors for the same under this act.

Assignees to file account at the end of three months.

XXXV. And be it further enacted, that the assignee or assignees of any such prisoner, at the end of three months at the farthest from the time of his or their accepting any such conveyance and assignment as aforesaid, and so from time to time as occasion shall require or the said Court shall direct, shall make up an account of such prisoner's estate, and make oath in writing before any person before whom affidavits are by this act directed to be sworn, that such account contains a fair and just account of the estate

and effects of such prisoner, got in by or for such assignee or assignees, and of all payments made in respect thereof; and that all payments in every such account charged where truly and *bonâ fide* made and paid, which account, so sworn, shall be filed by the proper officer of the said Court; and if it shall appear that such assignee or assignees have in his or their hands any balance wherewith a dividend may be made amongst the creditors of such prisoner, such assignee or assignees shall forthwith declare the amount of such balance, and proceed to make a dividend with the same, and notice of the time and place of making such dividend, in such form as the said Court shall direct, shall be published in like manner as notice of a meeting of creditors to approve the sale of real property is herein-before directed to be published, thirty days at least before such dividend shall be made; and such further notice thereof shall be given as the said Court may in any case or at any time direct; and in case such dividend shall be made before adjudication shall have been made in the matter of such prisoner's petition, as herein-after provided, the same shall be made amongst the creditors of such prisoner who shall prove their debts to the satisfaction of such assignee or assignees by affidavit sworn as by this act directed; and in case such dividend shall be made after such adjudication, the same shall be made amongst the creditors of such prisoner whose debts shall be admitted in his or her schedule so sworn to as herein-after directed, in proportion to the amount of the debts so proved and so admitted respectively, as the case may be: provided always, that if any such prisoner, creditor, or assignee shall object in whole or in part to any debt tendered to be so proved as aforesaid, or to any debt mentioned in the schedule of such

Notice to be given of dividend.

How dividend is to be made.

Court may examine into disputed claims.

prisoner, or if any person whose demand is stated in such schedule, but is not admitted therein to the extent of such demand, shall claim to be admitted as a creditor for the whole of such demand, or for more thereof than is so admitted, the said objections and claims shall, upon application duly made, be examined into by the said Court or a commissioner thereof, on his circuit; and the said Court or commissioner may, if it shall seem fit, refer the examination of the same to an officer of the said Court, or to an examiner duly appointed in pursuance of this act; and the said Court or commissioner, and such officer or examiner to whom such reference shall have been made, shall have full power for the purpose aforesaid, to require and compel the production of all books, papers, and writings which may be necessary to be produced, as well by the person claiming such debt as by such prisoner, or his or her assignee or assignees, creditor or creditors, and to examine all such persons and their witnesses upon oath, as the nature of the case may require, and to take all other measures necessary for the due investigation of such objections and claims; and the decision of the said Court or commissioner thereupon shall be conclusive with respect to the title of any such creditor or creditors to his, her, or their share of such dividend under the provisions of this act: provided always, that in no case shall any such dividend be made before such adjudication shall have been made as aforesaid, unless the said Court shall so direct.

If prisoner or creditor or Court dissatisfied with assignee's account, Court may direct inquiry.

XXXVI. And be it further enacted, that in case such prisoner, or any of his or her creditors, or the said Court, shall at any time be dissatisfied with the account of any such assignee or assignees, so rendered upon oath as aforesaid, or it shall appear to the said

Court that the matters of such account require examination, or in case any such assignee or assignees shall neglect to render such account, or shall neglect to dispose of the property, or collect the effects of such prisoner, or shall in any manner waste or mismanage the estate or effects of such prisoner, or neglect to make a due distribution thereof, it shall be lawful for the said Court to require such assignee or assignees to render such account on oath, as is directed by this act, if not before rendered, and for the said Court, or any commissioner thereof on his circuit, to examine any account so rendered, and to inquire into any waste, mismanagement, or neglect of the estate and effects of such prisoner, and if it shall seem fit, to order that it shall be referred to an officer of the said Court, or to an examiner, duly appointed in pursuance of this act, to investigate the accounts of such assignee or assignees so rendered as aforesaid, and to examine into the truth thereof, and to report thereon to the said Court or commissioner; and it shall and may be lawful for the said Court or commissioner, or such officer or examiner, upon such reference as aforesaid, to require and compel the production of all books, papers, and writings necessary for such purposes, and to summon all parties before him or them, and to examine all parties and their witnesses on oath, as the case may require; and the said Court or commissioner shall and may take all such measures as shall be necessary for the compelling of the rendering of such account, and for the due investigation thereof, and shall have power to disallow any charge or charges in such account, which it shall appear to the said Court or commissioner ought not in fairness to be allowed, and to award costs against any of the parties, as justice shall require;

If no account rendered, Court may compel the rendering thereof.

Court may charge assignee with 20l. per cent. on money wilfully retained.

and that if it shall appear to the said Court or commissioner upon such inquiry, that any such assignee or assignees shall have wilfully retained in his or their hands, or otherwise employed for his or their own benefit, any sum or sums of money, part of or being the produce of such estate or effects, the said Court or commissioner shall have power and authority to order such assignee or assignees to be charged in his or their accounts with the estate of such prisoner, with such sum or sums of money as shall be equal to the amount of interest, computed at a rate not exceeding twenty pounds *per centum per annum*, on all sums of money appearing to the said Court or commissioner to be so retained or employed by him or them, for the time or times during which he or they shall have so retained or employed the same; and the said Court shall, in pursuance of such order, charge such assignee or assignees in their accounts with such sum or sums of money accordingly; and the decisions of the said Court or commissioner upon all such matters, shall be final and conclusive.

Court to take measures for compelling due distribution by assignees.

XXXVII. And be it further enacted, that it shall be lawful for the said Court or a commissioner thereof on his circuit, upon such inquiry so made as aforesaid, to ascertain the produce of the estate and effects of any such insolvent, to be divided among his or her creditors, and to direct the distribution thereof, and to take all such measures and make such orders as shall be necessary for the compelling of the proper disposition and distribution thereof, according to this act; and that if it shall at any time appear to the said Court or commissioner, that any dividend or dividends shall have remained in the hands of any such assignee or assignees, for the space of twelve calendar months next following the declaring thereof

Dividends unclaimed for 12 months, to be paid into Court

by such assignee or assignees, or for the space of twelve calendar months next following any order of the said Court, made for the declaring or making thereof, it shall and may be lawful to and for the said Court or commissioner to order and direct that such unclaimed dividend or dividends shall be immediately paid into the said Court, to the credit of the estate of such insolvent; and in default of the payment of the same by the time which shall be limited by the said Court or commissioner for that purpose, it shall and may be lawful to and for the said Court or commissioner to make such summary remedy for that purpose, by a distress and sale of the goods and chattels of such assignee or assignees, as to the said Court or commissioner shall seem proper; and if no sufficient distress can be found, then and in such case the said Court or commissioner shall be at liberty to commit the offender to the prison of the King's Bench, or to the common gaol of any county in which such offender shall be, or shall usually reside, without bail or mainprize, there to remain until the said Court or commissioner shall make order to the contrary.

In default of which payment goods may be distrained; and if no distress, the party may be imprisoned.

XXXVIII. And be it further enacted, that in case any assignee of the estate and effects of any prisoner so appointed as aforesaid shall be unwilling to act, or in case of the death, incapacity, disability, misconduct, or absence from the realm of any such assignee, it shall be lawful to and for any creditor or creditors of such prisoner, to apply to the said Court to appoint a new assignee or assignees, with like powers and authorities as are given by this act to the assignee or assignees hereinbefore mentioned, and that the said Court shall have power to remove such assignees, and to appoint such new assignee or assignees, and to compel any assignee who shall be removed,

Court may remove assignees and appoint new assignees.

and the heirs, executors, or administrators of any deceased assignee, to account for and deliver up to the said Court, or as the said Court shall order, all such estate and effects, books, papers, writings, deeds, and other evidences relating thereto as shall remain in his or their hands, to be applied for the purposes of this act, and the decision of the said Court in the matters aforesaid shall be final and conclusive; and from and immediately after such appointment of a new assignee or assignees, and by virtue of the order of the said Court in that behalf, all the estate, effects, rights, and powers of such prisoner, vested in any such former assignee or assignees, shall become and the same are hereby vested in such new assignee or assignees, without any new assignment or conveyance executed in that behalf; and every such removal and appointment shall be entered of record in the said Court, and such notice thereof shall be published as the said Court shall at any time direct, and proof of such removal and appointment so entered of record as aforesaid shall be received by such certified copy thereof, as is herein-before directed to be received as proof of assignments made in pursuance of this act.

What shall be evidence of removal and appointment.

XXXIX. And be it further enacted, that in case any such assignee so removed as aforesaid, or the heirs, executors, or administrators of any deceased assignee, or any of them, shall not account for and deliver up such estate and effects, books, papers, writings, deeds, and other evidences as aforesaid, or shall not pay over the balance of the produce of any such estate or effects found to be in his or their hands, in obedience to the order of the said Court made thereupon, and notified to him or them respectively, it shall and may be lawful for the said Court to order the person or persons so offending to be arrested and com-

If assignee or executor, &c. so removed shall not deliver over property, Court may commit him.

mitted to the prison of the King's Bench, or to the common gaol of any county where he or they shall be, or where he or they shall usually reside, there to remain, without bail or mainprize, until such person or persons shall have fulfilled the duty required by this act, or until the said Court shall make order to the contrary.

After petition filed, prisoner to deliver in a schedule of debts, property, &c.

XL. And it is hereby further enacted, that every such prisoner who shall apply for relief under this act shall, within the space of fourteen days next after his or her petition shall have been filed as aforesaid, or within such further time as the said Court shall think reasonable, deliver into the said Court a schedule, containing a full and fair description of such prisoner, as to his or her name or names, trade or trades, profession or professions, together with the last usual place of abode of such prisoner, and the place or places where he or she has resided during the time when his or her debts were contracted; and also a full and true description of all debts due or growing due from such prisoner at the time of filing such petition, and of all and every person and persons to whom such prisoner shall be indebted, or who to his or her knowledge or belief shall claim to be his or her creditors, together with the nature and amount of such debts and claims respectively, distinguishing such as shall be admitted from such as shall be disputed by such prisoner; and also a full, true, and perfect account of all the estate and effects of such prisoner, real and personal, in possession, reversion, remainder, or expectancy; and also of all places of benefit or advantage held by such prisoner, whether the emoluments of the same arise from fixed salaries or from fees, or otherwise; and also of all pensions or allowances

of the said prisoner, in possession or reversion, or held by any other person or persons for or on behalf of the said prisoner, or of and from which the said prisoner derives or may derive any manner of benefit or advantage; and also of all rights and powers of any nature and kind whatsoever, which such prisoner, or any other person or persons in trust for such prisoner, or for his or her use, benefit, or advantage, in any manner whatsoever, shall be seised or possessed of, or interested in, or entitled unto, or which such prisoner, or any other person or persons in trust for him or her, or for his or her benefit, shall have any power to dispose of, charge, or exercise for the benefit or advantage of such prisoner; together with a full, true, and perfect account of all the debts due or growing due at the time of filing such petition, to such prisoner, or to any person or persons in trust for him or her, or for his or her benefit or advantage, either solely or jointly with any other person or persons, and the names and places of abode of the several persons from whom such debts shall be due or growing due, and of the witnesses who can prove such debts, so far as such prisoner can set forth the same; and the said schedule shall also contain a balance sheet of so much of the receipts and expenditures of such prisoner, and of the items composing the same, as shall be at any time required by the said Court in that behalf; and shall also fully and truly describe the wearing apparel, bedding, and other necessaries of such prisoner, and his or her family, and the working tools and implements of such prisoner, not exceeding in the whole the value of twenty pounds, which may be excepted by such prisoner from the operation of this act, together with the values of such excepted articles respectively; and the said schedule

shall be subscribed by such prisoner, and shall forthwith be filed in the said Court, together with all books, papers, deeds, and writings in any way relating to such prisoner's estate or effects, in his or her possession, or under his or her custody or controul.

Schedule to be filed with books and papers.

XLI. And be it further enacted, that the said Court shall forthwith, after such petition and schedule shall have been filed as aforesaid, in the said Court, by any such prisoner, appoint a time and place for the hearing of the matters of such petition and schedule, and the time so appointed shall in no case be more than four calendar months after the date of such appointment; and where such prisoner shall be in any gaol within the counties of *Middlesex* or *Surrey*, or the city of *London*, or borough of *Southwark*, the said Court shall order such prisoner to be brought before the said Court, and the matters of such petition shall be heard by the said Court in pursuance of such order; and where any such prisoner shall be in any gaol in *England*, except in *Middlesex*, *Surrey*, *London*, or *Southwark* aforesaid, and except in the principality of *Wales*, and town of *Berwick-upon-Tweed*, the said Court shall order such prisoner to be brought before one of the commissioners of the said Court, proceeding on his circuit at such assize or other town or place within the county or county of a city or town wherein such gaol shall be situate, as may be directed by the order of the said Court in that behalf, and the matters of the petition of such prisoner shall be heard by such commissioner, in pursuance of such order; and where any such prisoner shall be in any gaol within the principality of *Wales*, or town of *Berwick-upon-Tweed*, the said Court shall order such prisoner to be brought before the justices of the peace for the county, city, town, liberty, or place wherein such gaol shall be

Court to appoint time and place for hearing matters of petition and schedule.

Hearing by the Court.

Manner of proceeding by commissioner on circuit;

by justices in Wales at sessions.

situate, in open Court, at their general or general quarter sessions of the peace, or at some adjournment thereof, and the matters of the petition of such prisoner shall be heard by such justices in pursuance of such order.

Notice of hearing to be given to creditors, and advertised.

XLII. And be it further enacted, that the said Court shall cause notice of the filing of every such petition and schedule, and of the time and place so appointed as aforesaid, for hearing the matters of such petition and schedule, to be given by such means as the said Court shall direct to the creditor or creditors at whose suit any such prisoner shall be detained in custody, or the attorney or agent of such creditor or creditors, and to the other creditors named in the schedule of such prisoner, and resident within the united kingdom, and whose debts shall amount to the sum of five pounds, and to be inserted in the *London Gazette*, and also, if the said Court shall think fit, in the *Edinburgh* and *Dublin Gazettes*, or either of them, and also in such other newspaper or newspapers as the said Court shall direct.

At the time of hearing, the matters of petition and schedule shall be examined.

XLIII. And be it further enacted, that at such hearing as aforesaid the said Court or commissioner or justices shall examine into the matters of the petition and schedule of every such prisoner so brought before the said Court, commissioner, or justices, upon the oath of such prisoner, and of such parties and other witnesses as the said Court or commissioner or justices shall think fit to examine thereupon; and in case such notice as the said Court shall direct shall have been given by any creditor, of his or her intention to oppose such prisoner's discharge, it shall and may be lawful, both for the said creditor and any other of the creditors of such prisoner, to oppose such prisoner's discharge, and for that purpose to put such questions to such

Creditors may oppose prisoner's discharge.

prisoner, and examine such witnesses, as the said Court or commissioner or justices shall think fit, touching the matters contained in such petition and schedule, and touching such other matters as the said Court or commissioner or justices shall be of opinion that it may be fit and proper to inquire into, in order to the due execution of this act; but no creditor shall examine or oppose the discharge of such prisoner until he or she shall make oath or affidavit of his or her debt, or otherwise give satisfactory proof of his or her right to oppose such prisoner's discharge, if required so to do by such prisoner; and that in case the said Court or commissioner or justices shall entertain any doubt touching any matter alleged against such prisoner at such hearing, to prevent his or her discharge, or otherwise touching the schedule or the examination of such prisoner, or it shall appear that amendment is necessary to be made of such schedule, or in case such prisoner shall refuse to be sworn, or shall not answer upon oath to the satisfaction of the said Court or commissioner or justices, it shall be lawful for the said Court or commissioner or justices to adjourn the hearing and examination of such prisoner, and of the matters of his or her petition and schedule, and of witnesses thereupon, to some future sitting of the said Court or commissioner or justices, or to some future circuit to be made by one of the said commissioners, or to some future general or general quarter or adjourned sessions, as the case may be; and in every such case such prisoner shall upon such adjournment remain in custody, and shall and may be again brought up, and such hearing and examination be further proceeded in, as often as to the said Court or commissioner or justices shall seem fit: provided always, that when any such hearing shall be adjourned

Hearing may be adjourned.

by the said Court generally, or by such commissioner or justices, to some future circuit, or to some future sessions as aforesaid, the said Court shall and may, upon the application of such prisoner, to be made within such time as the said Court shall direct, order the said prisoner to be brought up for hearing accordingly, and such notice thereof shall be given, and to such parties, as the said Court or commissioner or justices shall direct.

Affidavits may be received in opposition to prisoner's discharge in certain cases.

XLIV. Provided always, and be it further enacted, that where the matters of the petition of any prisoner, whose usual place of abode at or lately before his or her imprisonment was otherwise than in *Middlesex*, *Surrey*, *London*, or *Southwark* aforesaid, shall be heard before the said Court, it shall and may be lawful for the said Court to receive the affidavits of any creditor or creditors, or other person or persons, not resident within *Middlesex*, *Surrey*, *London*, or *Southwark* aforesaid, in opposition to the discharge of such prisoner under this act; and also, if such Court shall think fit, to permit interrogatories to be filed for the examination or cross-examination of any person making or joining in such affidavits, and to adjourn the hearing and examination of such prisoner until such interrogatories shall be fully answered to the satisfaction of the said Court; and where the hearing of the matters of the petition of any prisoner shall be before any commissioner of the said Court on his circuit, or before any such justices as aforesaid, at their sessions aforesaid, and the usual place of abode of such prisoner at or lately before his or her imprisonment shall have been other than in the county or riding where such hearing shall be, it shall and may be lawful for such commissioner or justices to receive the affidavits of any creditor or creditors, or other

person or persons, not resident within the county or riding where such hearing shall be, in opposition to the discharge of such prisoner under this act, and also, if such commissioner or justices shall think fit, to permit interrogatories to be filed for the examination or cross-examination of any person making or joining in such affidavits, and to adjourn the hearing and examination of such prisoner until such interrogatories shall be fully answered to the satisfaction of the said commissioner or justices.

Schedule and prisoner's accounts may be referred to an officer of the Court, or an examiner, who may order prisoner to attend.

XLV. Provided always, and it is hereby enacted, that at such hearing or adjourned hearing of the matters of any prisoner's petition, it shall and may be lawful for the said Court or commissioner or justices, if it shall appear fit, upon application made by some creditor or creditors, and supported by oath or affidavit, to order that it shall be referred to an officer of the said Court, or to an examiner duly appointed according to the provisions of this act, to investigate the accounts of such prisoner, and to examine into the truth of his or her schedule, and to report thereon to the said Court or commissioner or justices; and that the said Court or commissioner or justices may at such hearing proceed on the other matters in opposition to the discharge of such prisoner, or may, if it shall appear just and reasonable so to do, forthwith adjourn the hearing thereof until such officer or examiner shall have made his report; and that upon such reference being made as aforesaid, in the matter of any such prisoner's petition, it shall be lawful for such officer or examiner to order the attendance of such prisoner as often as such officer or examiner shall think fit, and the prisoner mentioned in such order shall be accordingly carried before such officer or examiner, for which such order shall be a sufficient

Gaoler's fee for carrying him.

warrant; and the keeper of the prison, or his deputy, so carrying any prisoner before such officer or examiner, shall receive for the same the sum of ten shillings and no more, to be paid by the person or persons at whose requisition the said reference shall have been had; and such officer or examiner shall and may, under such reference, administer oaths, and examine all witnesses and parties upon their oaths touching all matters relating thereto: provided always, that no keeper of any prison shall be required or compelled to carry any prisoner a greater distance than two miles from his prison, to or before such officer or examiner, except that the keepers of prisons in *Middlesex* and *London*, and of the prisons of the *King's Bench* and *Marshalsea*, and in *Horsemonger Lane*, and of and in the borough of *Southwark*, shall carry their prisoners before such officer at the office of the said Court, or at such other place within the bills of mortality as the said Court shall direct; and that in all cases where such reference shall have been made as aforesaid, it shall be lawful for the said Court or commissioner or justices, if just cause shall appear, to order all the fees and expences of such reference, paid by any creditor or creditors, to be repaid to him, her, or them, out of the first money received by the provisional or other assignee or assignees of such prisoner, from or by his or her estate or effects.

Officer and examiner may administer oaths.

Court may order expences of reference to be paid out of insolvent's estate.

Court, &c. may adjudge prisoner to be discharged from custody, and entitled to the benefit of this act.

XLVI. And be it further enacted, that after such examination made into the matters of the petition and schedule of any such prisoner, as herein-before directed, it shall and may be lawful at such hearing, or adjourned hearing as aforesaid, for the said Court or commissioner or justices, upon such prisoner's swearing to the truth of his or her petition and schedule, and executing such warrant of attorney as is

herein-after directed, to adjudge that such prisoner shall be discharged from custody, and entitled to the benefit of this act, at such time as the said Court or commissioner or justices shall direct, in pursuance of the provisions herein-after contained in that behalf, as to the several debts and sums of money due or claimed to be due at the time of filing such prisoner's petition from such prisoner to the several persons named in his or her schedule as creditors, or claiming to be creditors for the same respectively, or for which such persons shall have given credit to such prisoner before the time of filing such petition, and which were not then payable, and as to the claims of all other persons, not known to such prisoner at the time of such adjudication, who may be indorsees or holders of any negotiable security set forth in such schedule so sworn to as aforesaid.

Court may adjudge discharge, &c. to be forthwith, or not later than six months from the filing of petition.

XLVII. And be it further enacted, that in all cases where no cause shall appear to the contrary, it shall and may be lawful for the said Court or commissioner or justices, according as shall seem fit, to adjudge that such prisoner shall be so discharged, and so entitled as aforesaid, forthwith, or so soon as such prisoner shall have been in custody at the suit of one or more of the persons as to whose debts and claims such discharge is so adjudicated, for such period or periods, not exceeding six months in the whole, as the said Court or commissioner or justices shall direct, to be computed from the filing of such prisoner's petition.

In certain cases discharge, &c. to be at any period not later than three years from petitioning.

XLVIII. And be it further enacted, that in case it shall appear to the said Court or commissioner or justices, that such prisoner has fraudulently, with intent to conceal the state of his or her affairs, or to defeat the objects of this act, destroyed, or otherwise wilfully prevented or purposely withheld the production of any

books, papers, or writings relating to such of his affairs as are subject to investigation under this act, or kept or caused to be kept false books, or made false entries in, or withheld entries from, or wilfully altered or falsified, any such books, papers, or writings, or that such prisoner has fraudulently, with intent of diminishing the sum to be divided among his or her creditors, or of giving an undue preference to any of the said creditors, discharged or concealed any debt due to or from the said prisoner, or made away with, charged, mortgaged, or concealed any part of his or her property, of what kind soever, either before or after the commencement of his or her imprisonment, then it shall and may be lawful for the said Court or commissioner or justices to adjudge that such prisoner shall be so discharged, and so entitled as aforesaid, so soon as he or she shall have been in custody at the suit of some one or more of the persons, as to whose debts and claims such discharge is so adjudicated, for such period or periods, not exceeding three years in the whole, as the said Court or commissioner or justices shall direct, to be computed as aforesaid.

In other cases discharge, &c. to be at any period not later than two years from petitioning.

XLIX. And be it further enacted, that in case it shall appear to the said Court or commissioner or justices that such prisoner shall have contracted any of his or her debts fraudulently, or by means of a breach of trust, or by means of false pretences, or without having had any reasonable or probable expectation at the time when contracted of paying the same, or shall have fraudulently, or by means of false pretences, obtained the forbearance of any of his or her debts by any of his or her creditors, or shall have put any of his or her creditors to any unnecessary expence, by any vexatious or frivolous defence or delay to any suit for recovering any debt or sum of money due from such

prisoner, or shall be indebted for damages recovered in any action for criminal conversation with the wife, or for seducing the daughter or servant of the plaintiff in such action, or for breach of promise of marriage made to the plaintiff in such action, or for damages recovered in any action for a malicious prosecution, or for a libel, or for slander, or in any other action for a malicious injury done to the plaintiff therein, or in any action of tort or trespass to the person or property of the plaintiff therein, where it shall appear to the satisfaction of the said Court that the injury complained of was malicious, then it shall and may be lawful for such Court or commissioner or justices to adjudge that such prisoner shall be so discharged, and so entitled as aforesaid, forthwith, excepting as to such debt or debts, sum or sums of money, or damages as above mentioned; and as to such debt or debts, sum or sums of money, or damages, to adjudge that such prisoner shall be so discharged, and so entitled as aforesaid, so soon as he or she shall have been in custody at the suit of the person or persons who shall be creditor or creditors for the same respectively, for a period or periods not exceeding two years in the whole, as the said Court or commissioner or justices shall direct, to be computed as aforesaid.

Discharge may extend to process for contempt in nonpayment of money;

L. And be it enacted, that the discharge of any prisoner so adjudicated as aforesaid shall and may extend to all process issuing from any court, for any contempt of any court, ecclesiastical or civil, for nonpayment of money or of costs or expences in any court, ecclesiastical or civil; and that in such case the said discharge shall be deemed to extend also to all costs which such prisoner would be liable to pay in consequence or by reason of such contempt, or on purging the same; and that every discharge so adjudicated as aforesaid, as to

and to costs incurred by

creditor, but subject to taxation.

any debt or damages of any creditor of such prisoner, shall be deemed to extend also to all costs incurred by such creditor before the filing of such prisoner's schedule, in any action or suit brought by such creditor against such prisoner for the recovery of the same; and that all persons as to whose demands for any such costs, money, or expences as aforesaid, any such person shall be so adjudged to be discharged, shall be deemed and taken to be creditors of such prisoner in respect thereof, and entitled to the benefit of all the provisions made for creditors by this act, subject nevertheless to such ascertaining of the amount of the said demands as may be had by taxation or otherwise, and to such examination thereof as is herein provided in respect of all claims to a dividend of such insolvent's estate and effects.

Discharge may extend to sums payable by way of annuity, &c.

LI. And be it further enacted, that the discharge of any such prisoner so adjudicated as aforesaid shall and may extend to any sum and sums of money which shall be payable, by way of annuity or otherwise, at any future time or times, by virtue of any bond, covenant, or other securities of any nature whatsoever; and that every person and persons who would be a creditor or creditors of such prisoner, for such sum or sums of money, if the same were presently due, shall be admissable as a creditor or creditors of such prisoner, for the value of such sum or sums of money so payable as aforesaid, which value the said Court shall, upon application at any time made in that behalf, ascertain, regard being had to the original price given for such sum or sums of money, deducting therefrom such diminution in the value thereof as shall have been caused by the lapse of time since the grant thereof to the time of filing such prisoner's petition; and such creditor or creditors shall be entitled in res-

pect of such value to the benefit of all the provisions made for creditors by this act, without prejudice nevertheless to the respective securities of such creditor or creditors, excepting as respects such prisoner's discharge under this act.

Court, &c. may order prisoner to be confined within walls of prison.

LII. And be it further enacted, that in all such cases, where it shall be adjudged that any such prisoner shall be so discharged and so entitled as aforesaid at some future period, it shall be lawful for the said Court or commissioner or justices, if it shall seem fit, to direct that such prisoner shall be confined during any such period within the walls of the prison, and not within any rules or liberties thereof.

Court, &c. may order costs, in certain cases, to be paid to opposing creditors out of insolvent's estate.

LIII. And be it further enacted, that whenever any creditor or creditors opposing any such prisoner's discharge shall prove to the satisfaction of the said Court or commissioner or justices, that such prisoner has done or committed any act for which, upon such adjudication as aforesaid, he or she may be liable to remain in such custody as aforesaid for a period not exceeding three years, to be computed as aforesaid, the said Court or commissioner or justices shall adjudge the taxed costs of such opposition to be paid to such opposing creditor or creditors out of the estate and effects of such prisoner, by his or her assignee or assignees, before any dividend made thereof; and in all other cases of opposition to a prisoner's discharge being substantiated or effectual, it shall be lawful for the said Court or commissioner or justices to adjudge in like manner, if it shall seem fit; and that in case it shall appear to the said Court or commissioner or justices, that the opposition of any creditor to any such prisoner's discharge was frivolous and vexatious, it shall and may be lawful for the said Court or commissioner or justices, to award such costs to such

Where opposition frivolous and vexatious, costs may be awarded to prisoner.

prisoner as shall appear to be just and reasonable, to be paid by the creditor or creditors making such opposition, which shall be paid accordingly.

Court or commissioner to make order, pursuant to adjudication; and issue warrant to gaoler.

LIV. And be it enacted, that where in the matter of any such petition heard before the said Court, or a commissioner thereof on his circuit, any such adjudication shall have been made as aforesaid by the said Court or commissioner, order shall be made accordingly by the said Court or commissioner, in pursuance of such adjudication, and the said Court or commissioner shall also issue a warrant or warrants to the gaoler accordingly, ordering the discharge of such prisoner from custody as to the detainers under which he or she shall then be confined, or which shall be lodged against him or her before he or she shall be out of custody, the same being for debts in respect of which such adjudication shall have been made; and where in the matter of the petition of any prisoner heard before such justices as aforesaid, any such adjudication as aforesaid shall have been made by such justices, the said justices shall forthwith certify such adjudication to the said Court, whereupon the said Court shall order that such prisoner shall be discharged from custody, and entitled to the benefit of this act, according to such adjudication, at the period or periods expressed therein, and shall order such costs to be paid as shall have been adjudged by the said justices in pursuance of the provisions of this act, and shall issue a warrant or warrants to the gaoler accordingly, ordering the discharge of such prisoner from custody as to the detainers under which he or she shall then be confined, or which shall be lodged against him or her before he or she shall be out of custody, the same being for debts in respect of which such adjudication shall have been made; and that every such order of adjudication

Justices to certify their adjudication to the Court, who shall thereupon make order, and issue warrant to gaoler.

shall take effect as from the day on which the adjudication shall have been made in that behalf; and that every such adjudication, and certificate thereof and order thereupon, may be made without specifying therein any such debt or debts, or sum or sums of money, or claims as aforesaid, or naming therein any such creditor or creditors as aforesaid, excepting so far as shall be necessary in any case in order to distinguish between the creditors as to whom any such prisoner may be adjudged to be so discharged and entitled as aforesaid forthwith, and the creditors as to whom he or she may be adjudged to be so discharged and entitled at some future period; provided nevertheless, that in all cases the detainer or detainers with respect to which any such prisoner shall have been adjudged to be discharged out of custody, he or she being then in custody thereupon, shall be specified in the warrant of the said Court or commissioner, to be delivered to the gaoler in that behalf.

Specification of debts, &c. not necessary in order of adjudication.

LV. Provided always, and be it enacted, that in all cases where it shall have been adjudged that any such prisoner shall be so discharged and so entitled as aforesaid at some future period, such prisoner shall be subject and liable to be detained in prison, and to be arrested and charged in custody at the suit of any one or more of his or her creditors with respect to whom it shall have been so adjudged, at any time before such period shall have arrived, in the same manner as he or she would have been subject and liable thereto if this act had not passed: provided nevertheless, that when such period shall have arrived such prisoner shall be entitled to the benefit and protection of this act, notwithstanding that he or she may have been out of actual custody during all or any part of the time subsequent to such adjudication, by reason

Where adjudication of discharge at a future period, prisoner may be arrested, &c. till period arrives.

of such prisoner not having been arrested or detained during such time, or any part thereof.

Court may order detaining creditor to pay prisoner a sum not exceeding 4s. a week.

LVI. And be it further enacted, that in all cases where such prisoner shall, upon such adjudication as aforesaid, be liable to further imprisonment at the suit of his or her creditor or creditors, or any or either of them, it shall be lawful at any time for the said Court, on the application of such prisoner, to order the creditor or creditors at whose suit he or she shall be so imprisoned to pay to such prisoner such sum or sums of money, not exceeding the rate of four shillings by the week in the whole, at such times and in such manner, and in such proportions, as the said Court shall direct, and that on failure of payment thereof, as directed by the said Court, the said Court shall order such prisoner to be forthwith discharged from custody at the suit of the creditor or creditors so failing to pay the same.

Before adjudication, prisoner shall execute warrant of attorney to confess judgment for amount of debts in schedule.

LVII. And be it further enacted, that before any adjudication shall be made in the matter of the petition of any such prisoner, the said Court or commissioner or justices shall require such prisoner to execute a warrant of attorney to authorize the entering up of a judgment against such prisoner in some one of the superior Courts at *Westminster*, in the name of the assignee or assignees of such prisoner, or of such provisional assignee, if no other assignee shall have been appointed and shall have accepted such office, for the amount of the debts stated in the schedule of such prisoner so sworn to as aforesaid, to be due or claimed to be due from such prisoner, or so much thereof as shall appear at the time of executing such warrant of attorney to be due and unsatisfied, and the order of the said Court for entering up such judgment shall be a sufficient authority to the proper officer for enter-

ing up the same, and such judgment shall have the force of a recognizance; and if at any time it shall appear to the satisfaction of the said Court that such prisoner is of ability to pay such debts, or any part thereof, or that he or she is dead, leaving assets for that purpose, the said Court may permit execution to be taken out upon such judgment, for such sum of money as under all the circumstances of the case the said Court shall order, such sum to be distributed rateably amongst the creditors of such prisoner according to the mode herein-before directed in the case of a dividend made after adjudication; and such further proceedings shall and may be had upon such judgment as may seem fit to the discretion of the said Court from time to time, until the whole of the debts due to the several persons against whom such discharge shall have been obtained shall be fully paid and satisfied, together with such costs as the said Court shall think fit to award; and no scire facias shall be necessary to revive such judgment on account of any lapse of time, but execution shall at all times issue thereon by virtue of the order of the said Court: provided always, that in case any such application against any such prisoner shall appear to the said Court to be ill-founded and vexatious, it shall be lawful for the said Court, not only to refuse to make any order on such application, but also to dismiss the same, with such costs against the party or parties making the same as to the said Court shall appear reasonable, and the said costs shall be paid accordingly.

Court may permit execution to be taken out thereupon, when insolvent is of ability to pay, or is dead, leaving assets.

No scire facias necessary.

If application ill-founded and vexatious, Court may dismiss the same with costs.

LVIII. And be it further enacted, that in case any such person shall, after he or she has become entitled to the benefit of this act, by any such adjudication as aforesaid, become entitled to or possessed of, in his or her own right, any stock in the public funds of

Where insolvent shall after discharge become entitled to property which cannot be taken in execution, assig-

nee may apply to Court for relief.

this country, or any bills of exchange, promissory notes, bank notes, or other choses in action, or other property, whether the same be in *England* or elsewhere, which by law cannot be taken in execution under the said judgment so to be entered up in the names of such assignee or assignees as aforesaid, and such prisoner shall have refused to convey or assign or transfer such stock, bills of exchange, promissory notes, bank notes, or other choses in action, or other property, or so much thereof as may be sufficient to satisfy the said judgment, then and in such case it shall and may be lawful for the assignee or assignees of such prisoner to apply by petition in a summary way, setting forth the facts of the case to the said Court, and to pray that the said prisoner may be taken and committed to custody notwithstanding any such adjudication and discharge as aforesaid; and thereupon, if upon examination by the said Court, and hearing as well the said assignee or assignees as the said prisoner, in case he or she shall appear, or the said assignee or assignees only, in case such prisoner, due notice having been given to him or her, shall not appear, it shall appear to the said Court that the contents of such petition are true, then and in such case the said Court shall so declare and adjudge, and shall thereupon order the said prisoner to be apprehended, and committed to custody, within the walls of any prison which the said Court shall direct, and not within any rules or liberties thereof, until he or she shall convey, assign, and transfer such bills of exchange, promissory notes, bank notes, or other choses in action, or other property, or so much thereof as the said Court shall direct, towards the satisfaction of the said judgment, to such assignee or assignees, for the general benefit of the creditors of such prisoner.

Court may order prisoner to be remanded to custody until he transfers such property.

Manner of proceeding where, after the discharge of a prisoner, any person shall be possessed of stock in public funds, &c. belonging to him.

LIX. And be it further enacted, that in case any person or persons, body politic or corporate, shall, after any such insolvent shall have become entitled to the benefit of this act by any such adjudication as aforesaid, become or be possessed of, or have under his or their power or controul, any stock in the public funds of this country, or any legacy, money due or growing due, bills of exchange, promissory notes, bank notes, securities for money, goods, and chattels, or any other property whatsoever, belonging to such insolvent, or held in trust for him or her, or for his or her use and benefit, or to which such insolvent shall be in any way entitled, or in case any such person or persons, body politic or corporate, shall be at such period in any manner indebted to such insolvent, it shall and may be lawful for the said Court, upon the application of any assignee or creditor of such insolvent, to cause notice to be given to such person or persons, body politic or corporate, directing him, her, or them to hold and retain the said property till the said Court shall make further order concerning the same; and thereupon it shall be lawful for the said Court further to order such person or persons, body politic or corporate, to deliver over such property, and to pay such debts as aforesaid, or any part thereof, to the provisional or other assignee or assignees of the estate and effects of such insolvent, for the general benefit of the creditors of such insolvent, entitled to claim under such judgment entered up by order of the said Court as aforesaid; and such delivery and payment shall be made accordingly, in obedience to such order; and such person and persons, body politic and corporate, shall by such payment and delivery, so made in pursuance of such order of the said Court, be discharged in respect of such property and debts

against all persons whatsoever, to all intents and purposes.

Person discharged under this act not liable to imprisonment for debts, &c. to which adjudication extends.

LX. And be it further enacted, that no person who shall have become entitled to the benefit of this act by any such adjudication as aforesaid shall at any time thereafter be imprisoned by reason of the judgment so as aforesaid entered up against him or her, according to this act, or for or by reason of any debt or sum of money, or costs, with respect to which such person shall have become so entitled, or for or by reason of any judgment, decree, or order for payment of the same; but that upon every arrest or detainer in prison upon any such judgment so entered up as aforesaid, or for or by reason of any such debt or sum of money or costs, or judgment, decree, or order for payment of the same, it shall and may be lawful for any judge of the Court from which any process shall have issued in respect thereof, and such judge is hereby required, upon proof made to his satisfaction that the cause of such arrest or detainer is such as herein-before mentioned, to release such prisoner from custody, unless it shall appear to such judge, upon inquiry, that such adjudication as aforesaid was made without due notice, where notice is by this act required, being given to or acknowledged by the plaintiff or [of] such process, or being by him or her dispensed with by the acceptance of a dividend under this act, or otherwise; and at the same time, if such judge shall in his discretion think fit, it shall and may be lawful for him to order such plaintiff, or any person or persons suing out such process, to pay such prisoner the costs which he or she shall have incurred on such occasion, or so much thereof as to such judge shall seem just and reasonable, such prisoner causing a common appearance to be entered for him or her in such action or suit.

If arrested to be released by judge of the Court from which process issued.

who may order costs to be paid to him.

LXI. And be it further enacted, that after any person shall have become entitled to the benefit of this act by any such adjudication as aforesaid, no writ of fieri facias or elegit shall issue on any judgment obtained against such prisoner, for any debt or sum of money with respect to which such person shall have so become entitled, nor in any action upon any new contract or security for payment thereof, except upon the judgment entered up against such prisoner according to this act; and that if any suit or action shall be brought, or any scire facias be issued against any such person, his or her heirs, executors, or administrators, for any such debt or sum of money, or upon any new contract or security for payment thereof, or upon any judgment obtained against, or any statute or recognizance acknowledged by such person for the same, except as aforesaid, it shall and may be lawful for such person, his or her heirs, executors, or administrators, to plead generally that such person was duly discharged according to this act by the order of adjudication made in that behalf, and that such order remains in force, without pleading any other matter specially; whereto the plaintiff or plaintiffs shall or may reply generally, and deny the matters pleaded as aforesaid, or reply any other matter or thing which may show the defendant or defendants not to be entitled to the benefit of this act, or that such person was not duly discharged according to the provisions thereof, in the same manner as the plaintiff or plaintiffs might have replied, in case the defendant or defendants had pleaded this act, and a discharge by virtue thereof, specially.

After discharge, no execution to issue against insolvent for debts, &c. to which adjudication extends.

Discharge under this act may be pleaded generally.

LXII. Provided always, and be it enacted, that if at any time after adjudication made in the matter of any such prisoner's petition, in pursuance of this act,

When debts satisfied, Court may order warrant of attorney to

be cancelled, and satisfaction to be entered on the judgment;

it shall appear to the satisfaction of the said Court that all the debts in respect of which such adjudication was made have been discharged and satisfied, it shall be lawful for such Court, upon application duly made, to direct the warrant of attorney executed by such prisoner under this act to be cancelled, or if judgment shall have been entered up thereon, to order satisfaction to be entered on such judgment, and the order of the said Court for entering up such satisfaction shall be a sufficient authority to the proper officer for entering up the same; and that if in any case it shall appear to the satisfaction of the said Court that after the debts of any such prisoner shall have been so discharged and satisfied as aforesaid, there shall remain in the possession or subject to the controul of his or her assignee or assignees, any property of any kind or description whatsoever which has come to such assignee or assignees, or to which he or they may claim title, by virtue of the assignment executed in that behalf or otherwise, by virtue of his or their office of assignee or assignees, it shall and may be lawful for the said Court, on application duly made, to order and compel such assignee or assignees forthwith to execute a conveyance and assignment of all such property so remaining as aforesaid, to the person whose debts shall have been so discharged and satisfied, or his or her heirs, executors, administrators, or assigns; and that any deed of release to be recorded in the said Court, by which any such debt or debts shall be released or discharged, shall not be liable to any stamp duty.

and a re-assignment to be executed.

Where error in schedule, without fraud, this act to operate upon actual amount of debt.

LXIII. And whereas it may sometimes happen that a debt of, or claim upon, or balance due from such prisoner as aforesaid, may be specified in his or her schedule so sworn to as aforesaid, at an amount which is not exactly the actual amount thereof, without any

culpable negligence or fraud, or evil intention on the part of such prisoner; be it enacted, that in such case the said prisoner shall be entitled to all and every benefit and protection of this act; and the creditor in that behalf shall be entitled to the benefit of all the provisions made for creditors by this act, in respect of the actual amount of such debt, claim, or balance, and neither more nor less than the same, to all intents and purposes, such error in the said schedule notwithstanding.

Persons who have already taken benefit of insolvent act, and uncertificated bankrupts, not entitled to relief under this act, within five years, except in certain cases.

LXIV. And be it further enacted, that no person petitioning the said Court for relief under this act, who shall have been at any time discharged by virtue of the same, or of any other act for the relief of insolvent debtors, or who shall have been duly declared bankrupt before the commencement of his or her imprisonment, under any commission still remaining in force, and shall not have obtained his or her certificate under such commission, shall be entitled to the benefit of this act within the space of five years after such discharge or declaration of bankruptcy, unless three fourths in number and value of the creditors against whom such person shall seek to be discharged by virtue of this act shall signify their assent to such discharge, or it shall be made to appear to the satisfaction of the said Court, or of a commissioner thereof on his circuit, or such justices as aforesaid, before whom the said person shall be brought for the hearing of the matters of his or her petition, that such person has since such former discharge, or declaration of bankruptcy, endeavoured by industry and frugality to pay all just demands upon him or her, and has incurred no unnecessary expence, and that the debts which such person has incurred, subsequent to such discharge or declaration of bankruptcy, have been necessarily incurred for the

maintenance of such person or his or her family, or that the insolvency of such person has arisen from misfortune, or from inability to acquire subsistence for himself or herself and his or her family.

Court, at request of creditors, may remove prisoners from the gaols in London, Middlesex, or Surrey, if their usual residence was elsewhere, to be heard in the county to which they are removed.

LXV. And be it further enacted, that if on the hearing of any prisoner's petition before the said Court it shall appear to the satisfaction of the said Court that the usual place of abode of such prisoner, lately before his or her arrest, was in some county or place within the united kingdom other than the counties of *Middlesex* or *Surrey*, or city of *London* or borough of *Southwark*, it shall be lawful for the said Court, if it shall think fit, upon the request of any creditor or creditors of such prisoner, to order such prisoner to be taken, at the expence of such creditor or creditors, from the gaol in which such prisoner shall then be, to the gaol of the county or place where such prisoner had lately, before such arrest, his or her usual place of abode; and if such late usual place of abode was in *Scotland* or *Ireland*, then to the gaol of such county or place as to the said Court shall, under the circumstances of the case, appear just and reasonable; and the order of the said Court in that behalf, directed to the keepers of the said gaols respectively, shall be their sufficient warrant, and they are hereby required, in pursuance thereof, to deliver and receive respectively the body of such prisoner, together with a certificate of the day or days, and cause or causes of detainer against such prisoner, who shall from and after such removal be deemed to be in custody of the sheriff or other responsible officer of the county or place wherein the gaol shall be situate, to which such prisoner shall have been so removed; and the said Court shall order such removal of the said prisoner from such gaol as aforesaid to be made on or before a

day to be named in such order, and if such prisoner shall not be removed accordingly on or before the said day, or on or before a day which the said Court shall name in any enlargement of the said order, (which enlargement it is hereby empowered to make whenever it shall seem just and reasonable so to do), then the said Court shall, upon application duly made, appoint a time for the hearing of the matters of such prisoner's petition by the said Court, and such advertisement thereof shall be published, and such notice given, and to such persons as the said Court shall in any case direct; and when any such prisoner shall have been removed, and shall be in custody in any gaol, in pursuance of such order, or of any enlargement thereof, the said Court shall appoint a time and place for the hearing of the matters of such petition, in the county or place where such gaol shall be situate, and such advertisement thereof shall be published, and such notice thereof given, and to such persons as the said Court shall in any case direct: provided always, that when the hearing of any such prisoner's petition shall take place, after such removal or failure of removal of such prisoner as aforesaid, it shall be lawful for all the creditors of such prisoner to oppose the discharge of such prisoner as in other cases, although no such creditor shall have opposed or given notice to oppose the said discharge at the time first appointed for the hearing of such petition; and that in all cases where any such prisoner shall be so removed as aforesaid, the expence incurred in such removal by the creditor or creditors requesting the same shall be repaid to him, her, or them, by the assignee or assignees of the estate and effects of such prisoner, out of such estate and effects, before any dividend shall be made thereof.

After such removal, creditors may oppose the discharge, as in other cases.

Expence of removal of prisoners.

Benefit of act not to be allowed to prisoners removed by habeas corpus.

LXVI. Provided always, and be it further enacted, that the benefit of this act shall not be allowed to any prisoner petitioning the said Court, who having been arrested in any county or place where he or she had, at or lately before such arrest, his or her usual place of abode, other than in the counties of *Middlesex* or *Surrey*, or the city of *London* or borough of *Southwark*, such usual place of abode being distant more than twenty miles from the court house of the said Court, shall be removed by any writ of habeas corpus sued out on his or her behalf, or by his or her procurement or request, from custody in such county or place to any other custody: provided nevertheless, that it shall and may be lawful for the said Court, if in any case the said Court shall think fit, at any time within ten days after the filing of the petition of any such prisoner, or within such further time as the said Court shall allow, upon the request of any such prisoner, to order such prisoner to be taken, at the expence of any person or persons who will pay the same, from the gaol in which such prisoner shall then be to the gaol of the county or place where such prisoner was arrested as aforesaid, and the order of the said Court in that behalf, directed to the keepers of the said gaols respectively, shall be their sufficient warrant, and they are hereby required in pursuance thereof to deliver and receive respectively the body of such prisoner, together with a certificate of the day or days, and cause or causes of detainer against such prisoner, who shall from and after such removal be deemed to be in custody of the sheriff or other responsible officer of the county or place wherein the gaol shall be situate, to which such prisoner shall have been so removed by such order; and the said Court shall order such removal of the said prisoner from such gaol

Court may permit such prisoner to be removed back at expence of any person willing to pay the same;

as aforesaid to be made on or before a day to be named in such order, or in any enlargement of the same, which enlargement the said Court is hereby empowered to make whenever it shall seem just and reasonable so to do; and when any such prisoner shall have been removed, and shall be in custody in any gaol in pursuance of such order, the said Court shall and may appoint a time and place for hearing the matters of such prisoner's petition and schedule, according to the provisions of this act, whereupon such proceedings shall be had as if such prisoner had been in the said last-mentioned gaol at the time of filing his or her petition.

whereupon same proceedings may be had as in other cases.

LXVII. And be it further enacted, that every such adjudication as aforesaid by the said Court, commissioner or justice, as aforesaid, in the matter of any prisoner's petition, and the order thereupon, so made as aforesaid, shall be final and conclusive, and shall not be reviewed by the said Court, unless the said Court shall thereafter see good and sufficient cause to believe that such adjudication has been made on false evidence, or otherwise improperly made or fraudulently obtained, in which case it shall and may be lawful for the said Court, upon the application of such prisoner, or of any creditor of such prisoner, to order such prisoner, upon due notice to be given to such persons, and in such manner as the said Court shall direct, to attend, or to be brought up, and the said matter to be re-heard before the said Court, or one of the commissioners thereof on his circuit, or such justices as aforesaid, as the case may require, who shall thereupon re-hear the same, and shall and may, if just cause shall appear, annul the original adjudication and order thereupon made in such case, and shall have the same powers and authorities upon

Adjudication and order to be final, unless obtained on false evidence, &c. in which case Court may order a re-hearing.

such re-hearing as upon any original hearing in pursuance of this act, and may adjudicate in such matter accordingly; and thereupon, in case the former adjudication in the said matter shall not be confirmed, such order, certificate, and warrant shall be made as required by this act to be made upon such original adjudication; and the said Court or commissioner or justices shall and may, if necessary, remand the said prisoner to the same custody in which he or she was at the time of the former hearing of the matters of his or her petition, there to be subject to imprisonment as if the former adjudication therein had not been made; and thereupon all detainers which were in force against such prisoner at the time of his or her former discharge from custody shall be deemed to be still in force against him or her as if such former adjudication had not been made; and the gaoler or keeper of the prison to which such prisoner shall be so remanded shall and is hereby required to receive such prisoner into his custody, in pursuance of such remand, for doing which the order of remand in such case shall be his sufficient warrant; and where in any case such prisoner shall refuse or neglect to appear before the said Court or commissioner or justices, according to such order for re-hearing as aforesaid, a copy whereof shall have been duly served on such prisoner, it shall and may be lawful for the said Court to order such prisoner to be apprehended, and committed to custody in such prison as the said Court shall direct, and to issue its warrant accordingly, and to cause such prisoner to be brought up for examination as often as to the said Court or commissioner or justices shall seem fit: provided always, that where upon such re-hearing it shall appear to the said Court, commissioner or justices, that such prisoner is not entitled to the

Insolvent refusing to appear may be apprehended, &c.

In adjudication of discharge on re-hearing, the

benefit of this act until some future period, according to the provisions herein-before contained, the said Court, commissioner or justices, shall and may, if it shall appear reasonable, adjudge the discharge of such prisoner at such future period to be calculated without including the time during which such prisoner shall have been out of custody since the time appointed for his or her discharge by such former adjudication as aforesaid.

time since former hearing not to be calculated.

LXVIII. Provided always, and be it further enacted, that if in any case an order or warrant for the discharge of any such prisoner shall have issued erroneously, and which is not pursuant to the adjudication made in that behalf, it shall be lawful for the said Court, on such error being shewn to the said Court, to revoke such order and warrant, and to annul, suspend, or amend the same, according to such adjudication, and if necessary to re-commit such prisoner to his or her former custody, when by such order or warrant he or she shall have been discharged therefrom; and the gaoler or keeper of the prison to whose custody such prisoner shall be so re-committed is hereby required to receive such prisoner into his custody according to such re-commitment; and all detainers which were in force against such prisoner at the time of such discharge as aforesaid shall be deemed to be still in force against him or her, as if such erroneous order or warrant had not issued.

Where order of discharge has been issued by mistake, Court may revoke and amend the same.

LXIX. And whereas the estate, both real and personal, of any person whose discharge has been adjudicated under this act, may not be sufficiently described or discovered in his or her schedule so sworn to as aforesaid, or the assistance of such person may be necessary to adjust, make out, recover, or manage his or her estate or effects, for the benefit of his or her

Prisoner may, after discharge, be examined as to estate and effects, on application of assignee.

creditors; be it therefore enacted, that it shall and may be lawful to and for the assignee or assignees of the estate and effects of any such person whose discharge shall have been adjudicated under this act, from time to time to apply to the said Court, that such person may be further examined as to any matters or things relating to his or her estate and effects, either by the said Court, or a commissioner thereof on his circuit, or by any justice of the peace within the principality of *Wales*, for the county or place within the said principality where such person shall then reside, or by any justice of the peace within the town of *Berwick-upon-Tweed;* and if the said Court shall order any such examination before any such justice, such justice shall send for or call before him such person by such warrant, summons, ways or means as he shall think fit; and if such person shall appear before such justice, such justice shall examine him or her upon oath, or otherwise, as to such matters and things as such assignee or assignees shall desire, relating to the estate and effects of such person; and if any such person, on payment or tender of payment of such reasonable charges as such justice shall judge sufficient, shall neglect or refuse to appear before such justice, or having come before such justice shall refuse to be sworn, or to answer such questions as by such justice shall be put to him or her, relating to the discovery of his or her estate and effects, vested or intended to be vested in such assignee or assignees as aforesaid, as required by the order of the said Court, such justice shall certify such default to the said Court; and thereupon, and also in case such person shall neglect or refuse to appear before such Court or commissioner, at such time and place as shall be directed by such order, or appearing shall refuse to be sworn,

Prisoner refusing to appear, or to answer questions, he may be committed.

or to answer such questions as shall be put to him or her relating to the discovery of his or her said estate and effects, then and in any of such cases it shall be lawful for such Court or commissioner, by warrant to commit such person to the common gaol of any county or place, there to remain without bail or mainprize until such time as he or she shall submit himself or herself to the order of the said Court in that behalf, and shall answer upon oath or otherwise, as shall be required, to all such lawful questions as shall be put to him or her in pursuance of the same for the purposes aforesaid.

Persons wilfully omitting any thing in schedule, guilty of a misdemeanor, and liable to three years imprisonment.

LXX. And be it further enacted, that in case any prisoner shall, with intent to defraud his or her creditors or creditor, wilfully and fraudulently omit in his or her schedule, so sworn to as aforesaid, any effects or property whatsoever, or retain or except out of such schedule, as wearing apparel, bedding, working tools, and implements, or other necessaries, property of greater value than twenty pounds, every such person so offending, and any person aiding and assisting him to do the same, shall, upon being thereof convicted by due course of law, be adjudged guilty of a misdemeanor, and thereupon it shall and may be lawful for the Court before whom such offender shall have been so tried and convicted to sentence such offender to be imprisoned and kept to hard labour for any period of time not exceeding three years; and that in every indictment or information against any person for such offence, it shall be sufficient to set forth the substance of the offence charged on the defendant, without setting forth the petition, or conveyance or assignment to the provisional assignee, appointment of assignee or assignees, or any conveyance or assignment whatever, or balance sheet, order

Indictment need only set out substance of offence charged.

for hearing, adjudication, order of discharge or remand, or any warrant, rule, order, or proceeding of or in the said Court, except so much of the schedule of such prisoner as may be necessary for the purpose.

Person swearing falsely under this act liable to punishment inflicted for perjury.

LXXI. And be it further enacted, that if any prisoner who shall apply for his or her discharge under the provisions of this act, or any other person taking an oath under the provisions of this act, shall wilfully forswear and perjure himself or herself in any oath to be taken under this act, and shall be lawfully convicted thereof, he or she so offending shall suffer such punishment as may by law be inflicted on persons convicted of wilful and corrupt perjury; and that in all cases wherein by this act an oath is required, the solemn affirmation of any person, being a quaker, shall and may be accepted and taken in lieu thereof; and that every person making such affirmation, who shall be convicted of wilful false affirmation, shall incur and suffer such and the same penalties as are inflicted and imposed upon persons convicted of wilful and corrupt perjury.

Married women may petition, on executing special conveyance and assignment.

LXXII. And whereas a married woman, being a prisoner for debt, cannot execute such conveyance and assignment, nor such warrant of attorney as is herein-before directed, and therefore cannot petition for and obtain a discharge under this act, without special provision being made for such purpose; be it therefore enacted, that if any married woman, being a prisoner within the intent and meaning of this act, shall petition to be discharged from any debt or debts under the provisions thereof, it shall be lawful for the said Court to receive such petition, without requiring such married woman to execute such conveyance or assignment, or such warrant as aforesaid, but instead thereof that the said Court shall require

such married woman to execute a conveyance and assignment for vesting in such provisional assignee as aforesaid all property, real and personal, to which she may be entitled for her separate use, or over which she shall have any power of disposition, notwithstanding her coverture, or which shall be vested in any trustees or trustee, or other person or persons, for her benefit, and to deliver up all personal estate and effects of which she shall have the actual possession, except her wearing apparel, bedding, and other such necessaries, not exceeding in the whole the value of twenty pounds, and also all other real and personal estate and effects to which she shall be entitled in any manner whatsoever, in possession, remainder, or reversion, subject only to such right, title, or interest as her husband may have therein; all which acts she is hereby empowered to do without her husband, notwithstanding her coverture, so nevertheless as not to prejudice any rights of her husband in such real and personal estate and effects respectively; and all such estate and effects, real and personal, in possession, remainder, or reversion, shall by such conveyance and assignment, so to be executed under the order of the said Court, be as effectually vested in such provisional assignee as aforesaid, as the same might have been vested in him by the conveyance and assignment of such woman if she had been sole and unmarried, subject only to the rights of her husband therein as aforesaid; and all provisions in this act contained, touching the real and personal estate of any prisoner seeking to be discharged under the authority thereof, shall apply to such real and personal estate and effects respectively, in the same manner as the same would apply to such real or personal estate and effects if such woman had been sole and unmarried, subject

only to the rights of her husband therein; and such married woman shall also execute a warrant of attorney to confess judgment in one of the superior Courts aforesaid, for the amount of the debts remaining unpaid from which she shall be so discharged as aforesaid; and such warrant of attorney, so executed, shall be sufficient authority for entering up judgment against such woman accordingly, notwithstanding her coverture, but such judgment shall not in any manner prejudice or affect the rights of her husband, except that the same shall be deemed and taken to be her debt, in case she shall die in the life-time of such husband, to the end that the same may be discharged out of her personal assets in a due course of administration, or out of her real estate, if any she shall have at the time of her death, but without prejudice to any estate or interest of her husband therein, as tenant by the curtesy; and in case such woman shall, during the life-time of her husband, become entitled to any property for her separate use, such judgment may be enforced against such separate property by suit in equity, or otherwise, under the order of the said Court, for the purpose of obtaining payment of so much of the debts in respect of which such woman shall have been discharged by the said Court as shall then remain unpaid; and in case such woman shall survive her said husband, such judgment may be after his death enforced against such woman or her property, real and personal, in such and the same manner, and with the same effect, as it might have been if she had been sole and unmarried at the time when she executed such warrant of attorney, and at the time when such judgment shall have been entered up as aforesaid: Provided always nevertheless, that the discharge of any married woman under the autho-

rity of this act shall not operate to discharge her husband from any debt in respect of which his wife shall be so discharged, but such debt, so far as the same shall remain unpaid or unsatisfied, shall be chargeable upon and in force against such husband, as fully to all intents and purposes as if his wife had not obtained such discharge.

Mode of proceeding with prisoners of unsound mind.

LXXIII. And be it further enacted, that if any person who shall at any time be a prisoner in any such prison as aforesaid, upon any such process as aforesaid, shall be or become of unsound mind, and therefore incapable of taking the benefit of this act, in such manner as he or she might have done if of sound mind, the gaoler or keeper of such prison shall forthwith require one or more justice or justices of the peace for the county, riding, division, or place wherein such prisoner shall be, to attend at the said prison, and inquire into the state of mind of such prisoner; and thereupon, and also in case any such justice or justices shall receive information by other means, that any such prisoner is of unsound mind as aforesaid, such justice or justices shall go to the said prison, and by his or their own view, and by examination on oath of such person or persons as he or they shall think fit to examine, shall inquire into the state of mind of such prisoner; and if it shall appear to such justice or justices upon such inquiry, that such prisoner is of unsound mind, and therefore incapable of taking the benefit of this act, in such manner as a person of sound mind might do, such justice or justices shall forthwith make a record of the fact, and certify the same to the said Court, and thereupon it shall be lawful for the said Court, at the instance of any person or persons on behalf of such prisoner, to order notice to be inserted in the *London Gazette*, and in two or

Application may be made by person on behalf of such prisoners.

more public newspapers usually circulated in the neighbourhood of such prison, and in the neighbourhood of the usual residence of such prisoner, before he or she was committed to such prison, as the said Court shall see fit, that application will be made to the said Court for the discharge of such prisoner on a day to be specified in such order and notice, being twenty-one days at least from the day of publication of such one of the said gazette and newspapers containing such notice as shall be last published, which notice, together with the service of the like notice on the creditor or creditors at whose suit such prisoner shall be detained in custody, or his, her, or their attorney or attornies in such suit, shall be deemed sufficient to authorize the said Court to proceed to the discharge of such prisoner, if otherwise entitled to such discharge, according to the true intent and meaning of this act; and the said Court shall proceed accordingly, and shall discharge such prisoner from custody, and do all other acts under this act, in case it shall appear that such prisoner might have obtained his or her discharge under this act if he or she had been of sound mind; and thereupon all and every estate, right, title, interest in law and equity, real and personal, power, benefit, and emolument whatsoever, which, if such prisoner was of sound mind, could or ought to be conveyed and assigned by such prisoner, pursuant to the provisions of this act, shall, by force and virtue of the order of the said Court for the discharge of such prisoner, be vested in the provisional assignee of the said Court, or in the other assignee or assignees appointed by the said Court, and named in the said order, or in any other order of the said Court in that behalf, as fully and effectually, and in the same manner, and with all and every the same

Court may discharge such prisoners;

may appoint assignees;

consequences and effects, both in fact and law, to all intents and purposes whatsoever, as if such prisoner had been of sound mind, and had duly conveyed and assigned the same to such provisional assignee at the time and in the manner in this act provided; and that it shall be lawful for the said Court to order judgment to be entered up against such prisoner, in the same manner as if he or she had been of sound mind, and had executed a warrant of attorney to authorize the entering up of such judgment in the manner herein-before directed, and such order shall be a sufficient authority to the proper officer for entering up the same; and any dividend to be made by such assignee or assignees shall be made in such manner, and such proceedings shall be thereupon had, as are herein-before provided in the case of a dividend of the estate and effects of any prisoner made before adjudication; and the discharge of every such prisoner of unsound mind, so made as aforesaid, shall extend to all debts and sums of money to which the same might have extended if such prisoner had been of sound mind, and had duly filed his or her schedule, according to the provisions of this act: provided always, that every such order of discharge, and of the appointment of an assignee or assignees in such case, shall be entered of record in the said Court, and proof thereof shall be received by such copy thereof as is herein-before directed to be received as proof of conveyances and assignments made in pursuance of this act.

may order judgment to be entered up.

LXXIV. And be it further enacted, that this act shall not extend or be construed to extend to discharge any prisoner seeking the benefit thereof, with respect to any debt due to His Majesty or his successors, or to any debt or penalty with which he or she shall stand charged at the suit of the crown, or of any person for

Discharge not to extend to crown debtors, unless treasury give consent.

any offence committed against any act or acts of parliament relative to any branch of the public revenue, or at the suit of any sheriff or other public officer, upon any bail bond entered into for the appearance of any person prosecuted for any such offence, unless three of the commmissioners of His Majesty's treasury for the time being shall certify under their hands their consent to such discharge.

Prisoners under writ of capias or extent may apply to the barons of the exchequer to be discharged.

LXXV. And be it further enacted, that it shall and may be lawful for any person who may now or shall hereafter be imprisoned under or by virtue of any writ of capias or extent, issued and remaining in force at the instance or for the benefit and reimbursement of any surety or sureties, or other person or persons, or the inhabitants of any parish, ward, or place, who shall or may have advanced and paid the debt to the crown, and by reason whereof the commissioners of His Majesty's treasury may not be authorized to give their consent as last aforesaid, to apply to the barons of His Majesty's court of exchequer in *England* or *Scotland* for his or her discharge, giving one month's previous notice in writing to the surety or sureties, or person or persons aforesaid, or to the churchwardens or overseers of the parish, ward, or place at whose instance or for whose benefit respectively such capias or extent shall remain in force, of the intention of such person so imprisoned to make such application, and an enumeration and description of all and every the property, debts, and effects whatsoever of such person, in his or her own possession or power, or in the possession or power of any other person or persons, for his or her use, and for the said Court to whom such application shall be made, to order such person to be brought before them, or before any baron of the said court, to be examined

upon oath touching and concerning his or her property and effects; and if such person shall upon such examination make a full disclosure of all his or her property and effects, and it shall otherwise appear to the satisfaction of such Court reasonable and proper that such person should be no longer imprisoned under such writ, for such Court or baron to order a writ of supersedeas quoad corpus to be issued out of the said Court, for the liberation of such person from such imprisonment: provided always, that no such liberation as aforesaid shall be held or deemed to satisfy or supersede such extent, or any proceedings thereon, except as to such imprisonment as aforesaid, or the debt or debts seized under and by virtue thereof, and for which such person shall be so imprisoned.

Officer of court to produce proceedings, and give copies.

LXXVI. And be it further enacted, that the proper officer of the said Court for the relief of insolvent debtors shall, on the reasonable request of any such prisoner as aforesaid, or of any creditor or creditors of such prisoner, or his, her, or their attorney, produce and shew to such prisoner, creditor or creditors, and his, her, or their attorney, at such times as the said Court shall direct, such petition, schedule, order of adjudication, and all other orders and proceedings made and had in the matter of such prisoner's petition, and all books, papers, and writings filed in such matter, and permit him, her, or them to inspect and examine the same, and shall provide for any such prisoner, creditor or creditors, or his, her, or their attorney, requiring the same, a copy or copies of such petition and schedule, or of such part thereof as shall be so required, receiving such fee as the said Court shall appoint for so providing the same; and that a copy of such petition, schedule, order, and other orders and proceedings, purporting to be signed by the

A copy of such proceedings under seal to be admitted as evidence.

officer in whose custody the same shall be, or his deputy, certifying the same to be a true copy of such petition, schedule, order or other proceeding, and sealed with the seal of the said Court, shall at all times be admitted in all courts whatever, and before commissioners of bankrupt and justices of the peace, as sufficient evidence of the same, without any proof whatever given of the same, further than that the same is sealed with the seal of the said Court as aforesaid.

Manner of proceeding when the hearing takes place before commissioners on circuit, or justices in Wales.

LXXVII. And be it further enacted, that when an order has issued for hearing the matter of the petition and schedule of any such prisoner, at any place other than in *Middlesex*, *Surrey*, *London*, and *Southwark* aforesaid, such prisoner shall, within ten days after such order issued, or on such earlier day as shall be named in such order, cause the duplicate of such petition and schedule, and all books, papers, and writings relating thereto, in his or her possession or power, to be lodged with the clerk of the peace of the county, or county of a city or town, or of the town of *Berwick-upon-Tweed*, where he or she shall be in custody, or with the deputy of the said clerk of the peace, to be approved of by the said Court, and such prisoner shall be subject to such order as the said Court shall make to enforce compliance with the directions of this act in this behalf; and that the said clerk of the peace, or his said deputy, shall, on the reasonable request of such prisoner, or of any creditor or creditors of such prisoner, or of his, her, or their attorney, produce and shew to him, her, or them such petition and schedule, and such books, papers, and writings, and permit him, her, or them to inspect and examine the same, and may and shall receive the fee of one shilling from each and every creditor, or his or her attorney, at each time of his, her, or their so request-

ing and having the production of the same, or any part thereof; and that such clerk of the peace, or his said deputy, shall provide for any such creditor or creditors, or his, her, or their attorney requesting the same, a copy or copies of such petition and schedule, or of such part thereof as shall be so required; and that such clerk of the peace, or his said deputy, shall be entitled to receive four-pence for every sheet so copied, containing seventy-two words, and no more, unless the same shall be the last or only sheet, in which case he shall be entitled to four-pence for such last or only sheet, although it does not contain seventy-two words; and that every such duplicate as aforesaid, and all the said books, papers, and writings shall be brought to the place of such hearing, and produced at such hearing by the said clerk of the peace, or his said deputy, who shall and is hereby required to attend at the hearing of the matters of every such petition, with proper officers to preserve order in the court-house, or other place of such hearing, and where any such county shall be within the circuit of one of the said commissioners, then such clerk of the peace, or his said deputy, shall and may act as clerk to such commissioner, to assist him in the performance of his several duties under this act; and in all such cases, both before such commissioner and before such justices as aforesaid, the said clerk of the peace, or his said deputy, shall, in consideration and recompence of and for his trouble in this behalf, be entitled to receive from every such prisoner so brought up for hearing as aforesaid the sum of five shillings, which shall be paid previously to the bringing up such prisoner for hearing as aforesaid: provided always, that if it shall at any time appear to the said Court that it is expedient that the

duplicates of the petitions and schedules of prisoners confined in the gaol of any city, borough, town, or place, at which the commissioners of the said Court shall give attendance on their circuits so made as aforesaid, should be lodged with the town clerk or other officer of such city, borough, town, or place, and that the duties hereinbefore required of such clerk of the peace should be performed at such city, borough, town, or place, by such town clerk, or other officer of the same, it shall be lawful for the said Court in any such case to order that the duplicates of the petitions and schedules last aforesaid, and all such books, papers, and writings as aforesaid, shall be lodged with such town clerk or other officer, instead of such clerk of the peace as aforesaid, and that all duties hereinbefore required of such clerk of the peace in respect of the same shall be performed by such town clerk or other officer, instead of such clerk of the peace, and that the said town clerk or other officer, shall thereupon do and perform all the duties aforesaid at such city, borough, town, or place, in the matters of all prisoners confined in the gaol thereof, and shall be entitled to receive the same fees and payments in respect thereof as are herein directed to be paid and made to such clerk of the peace or his deputy as aforesaid.

Power of justices to compel the attendance of witnesses.

LXXVIII. And it is hereby enacted, that such justices as aforesaid shall have such and the same powers of compelling the attendance of witnesses, and of requiring and compelling the production of books, papers, and writings for the purposes of this act, as are herein-before given to the said Court and the commissioners thereof, subject to such provisoes and limitations as the same are made subject to; and that in all cases where the duplicate of any petition and schedule shall have been so lodged as aforesaid with any

Clerk of the peace may issue subpoenas.

such clerk of the peace or his deputy as aforesaid, or with such town clerk or other officer as aforesaid, such clerk of the peace or his said deputy, or such town clerk or other officer, is hereby authorized to issue all subpœnas under this act as may be requisite, in each of which the names of not more than four persons shall be inserted, and to receive for such subpœna from the person requiring the same the sum of two shillings and sixpence, and no more.

Examiners to be appointed for counties.

LXXIX. And be it further enacted, that the said Court in all cases, or any commissioner thereof on his circuit, or such justices as aforesaid in open Court at such sessions as aforesaid respectively, may from time to time, as occasion shall require, appoint as many fit persons as shall be requisite, to be examiners for the purposes of this act, within any county, or county of a city or town, or any riding or division of any county within the circuit of such commissioner, and within the county or other place for which such sessions as aforesaid shall be holden; and that such examiner shall and may receive for his trouble the sum of one pound, and no more, for every meeting held by him in pursuance of this act, to be paid by the person or persons requiring the same.

Their fees.

Fee to keeper for carrying each prisoner before the Court;

LXXX. And be it further enacted, that the keepers of the several prisons in *London* and *Middlesex*, and of the prisons of the King's Bench, Marshalsea, *Horsemonger Lane*, and of the Borough of *Southwark*, shall be entitled to receive the sum of three shillings, and no more, from every prisoner in the custody of such keepers respectively, for carrying him or her before the said Court on the hearing of the matters of his or her petition and schedule as aforesaid; and that all keepers of prisons shall be entitled to receive the sum of one shilling and sixpence, and no more, from every

prisoner in the custody of such keepers respectively, for carrying him or her before a commissioner of the said Court on his circuit, or before such justices as aforesaid at their sessions aforesaid, on the hearing of the matters of the petition and schedule of such prisoner; and that the expence of conveying any prisoner to any assize or other town appointed as the place of hearing the matters of his or her petition as aforesaid, in every case where the gaol in which such prisoner shall be confined shall not be situate within such assize or other town, not exceeding one shilling a mile, shall be paid to the keeper or gaoler, or other officer, who shall bring such prisoner to such assize or other town, in obedience to the order of the said Court, out of the estate and effects of such prisoner, if the same shall be sufficient to pay such expence, and if not, then such expence shall be paid by the treasurer of the county, or county of a city or town, in which such prisoner shall be imprisoned, as the same shall be directed or ordered by the commissioner or justices before whom such prisoner shall be so brought in pursuance of such order; and in all such cases the reasonable expence of such clerk of the peace or his deputy as aforesaid, and of such proper officers, to preserve order, as herein-before mentioned, and all other expences necessary for making ready such court house or other place as aforesaid for the dispatch of business in pursuance of this act, shall be paid by such treasurer as aforesaid, and the justices of the peace of every such county, or county of a city or town, are hereby empowered and required to order such treasurer to pay the same at their general or general quarter sessions next ensuing the day when such hearing shall have taken place: Provided nevertheless, that where the duties at any city, borough,

for paying the expence of conveying prisoners to assize towns;

as also the other expences in pursuance of this act.

town, or place, shall be performed by any town clerk or other officer, in pursuance of such order of the said Court as abovementioned in that behalf, the reasonable expences of such town clerk or other officer, and of such proper officers as aforesaid, and of such court house or other place as aforesaid, shall be defrayed by the said city, borough, town, or place, in the same manner as such like expences are defrayed therein upon other occasions.

Sheriffs and other persons indemnified for obeying the orders of the Court.

LXXXI. And be it further enacted, that every sheriff, gaoler, keeper, or other officer of any prison, who shall do any thing in obedience to any order of the said Court, or of any commissioner thereof, or of any justice or justices of the peace, officer of the said Court, or such examiner as aforesaid, authorized by the said Court, by virtue of this act, shall be and is and are hereby indemnified for whatsoever shall be done by them respectively in obedience thereto; and that if any action of escape, or any suit or action, be brought against any judge, commissioner, justice of the peace, sheriff, gaoler, keeper of any prison, or any person, for performing the duty of his office, in pursuance of this act, such judge, commissioner, justice of the peace, sheriff, gaoler, keeper of prison, and other person, may plead the general issue, and give this act and the special matter in evidence; and if the plaintiff be nonsuited, or discontinue his or her action, or a verdict shall pàss against him or her, or judgment shall be had for the defendant upon demurrer, the defendant shall have treble costs.

If action for escape, &c. brought, general issue may be pleaded, and this act given in evidence.

What shall be sufficient to be set forth in the rules and proceedings of the Court.

LXXXII. And be it further enacted, that in all rules, orders, warrants, and other proceedings of the said Court, or of any commissioner thereof under this act, it shall be sufficient to set forth such rule, order, or warrant, or in case of a warrant for the ap-

prehension or detention of any person for a contempt, in disobeying any order or rule of the said Court, or for the apprehension or detention of any person for the appearance of such person before the said Court, or any commissioner thereof, or any justice or justices of the peace, according to this act, or for the enforcing any rule or order of the said Court, it shall be sufficient to set forth such rule or order, and the warrant thereon, and that the insolvent, in any order, rule, warrant, or other proceeding mentioned, has been duly discharged under this act, or some other act for the relief of insolvent debtors, if he or she has been so discharged, or if he or she has not been so discharged, that he or she has applied by petition to the said Court for his or her discharge from custody, according to the provisions of this act, without setting forth in any such order, rule, warrant, or other proceeding, the petition, conveyance or assignment to the provisional assignee, appointment of assignee or assignees, or any conveyance or assignment whatever, or the schedule, balance sheet, order for hearing, adjudication, order for discharge, or any other rule, order, or proceeding of or in the said Court, or any part thereof, except as aforesaid.

Before whom affidavits are to be sworn.

LXXXIII. And be it further enacted, that all affidavits to be used before the said Court, or any commissioner thereof, or any justices of the peace, or any officer of the said Court, or any examiner appointed as aforesaid under this act, shall and may be sworn before the said Court, or any commissioner thereof, or any commissioner appointed by the said Court for the purpose of taking affidavits, or any master extraordinary in chancery, or commissioner for taking affidavits in any of the superior courts of *Westminster*, or in *Scotland* or *Ireland* before a magistrate of the county, city,

town, or place where any such affidavit shall be sworn.

LXXXIV. And be it further enacted, that in all cases in which the said Court, or any commissioner thereof, or any justices, is or are by this act authorized to award costs against any person or persons, it shall and may be lawful for the said Court to cause such costs to be recovered from such person or persons in the same manner as costs awarded by a rule of any of the superior courts at *Westminster* may be recovered.

Recovery of costs.

LXXXV. And be it further enacted, that the said Court shall and may admit, at their discretion, any number of fit persons, being attornies of any of the superior courts at *Westminster*, to practice in the said Court as attornies on behalf of such prisoners in such actual custody as aforesaid, which admissions shall in all cases be made without the payment of any fee or gratuity whatsoever, and shall be filed of record in the said Court; and that in case any person not so admitted on the files of the said Court, or having after such admission been removed from the said files, or ceased to be an attorney of any of the superior courts at *Westminster*, shall practise in the said Court as an attorney, on behalf of any prisoner in such actual custody as aforesaid, he shall be deemed and taken to be guilty of a contempt of the said Court, and that every person so guilty of any such contempt as aforesaid shall be liable to fine as well as imprisonment for the same.

Court to admit attornies to practice therein.

Persons not duly appointed, practising as attornies, guilty of contempt.

LXXXVI. And be it further enacted, that the sum of three shillings and no more shall be paid to any printer or proprietor of any newspaper for the insertion of any advertisement by this act directed to be inserted in any newspaper; and all printers and proprietors of newspapers are hereby required to insert

What shall be paid for insertion of advertisements.

the same on payment of the said sum of three shillings for the insertion thereof, in such form as the said Court or any commissioner thereof shall from time to time direct.

Proceedings not liable to stamp duty; nor sales to auction duty.

LXXXVII. And be it further enacted, that no conveyance, assignment, letter of attorney, affidavit, certificate, or other proceeding, instrument, or writing whatsoever, before or under any order of the said Court, or before or under any order of any commissioner thereof, or before any justice or justices of the peace acting in the execution of this act, nor any copy thereof, nor any advertisement inserted in any newspaper by the direction of the said Court, relating to matters within the jurisdiction of the said Court, shall be liable to or chargeable or charged with the payment of any stamp or other duty whatsoever; and that no sale of any real or personal estate of any such prisoner as aforesaid, for the benefit of his or her creditors under this act, shall be liable to any auction duty.

Court may invest unclaimed money, and apply profit towards expences of the Court.

LXXXVIII. And whereas it may happen that money may remain in the said Court, produced by the estates and effects of insolvent debtors, who have taken the benefit of this or some other act for the relief of insolvent debtors, which has not been or may not be claimed by the assignees or creditors of such insolvents; be it further enacted, that it shall and may be lawful for the said Court to cause the same or any part thereof to be invested in government securities, and to apply the interest and profit arising therefrom towards defraying the expences of the said Court: Provided always, that no such money shall be so invested until the same shall have been in the hands of the said Court for twelve months at the least.

LXXXIX. And be it further enacted, that all the records, papers, documents, and money, of and belonging to or received under the authority of the said Court, now established for the relief of insolvent debtors, and hereby continued as aforesaid, shall, from and after the passing of this act, remain and continue in the custody of the officers of the said Court now duly having the custody of the same respectively, or of such officer or officers as the said Court shall at any time direct to receive the same, and that the said records shall be deemed and taken to be the records of the said Court so hereby continued as aforesaid.

Records of Court.

XC. And whereas it is expedient that persons imprisoned for debt, who may desire to petition the said Court at or soon after the time of the passing of this act, should not be delayed in such petitioning by the passing thereof; be it enacted, that it shall and may be lawful for the said Court, for a certain time after the passing of this act, to be limited by rule of the said Court, to permit the petitions and schedules of such persons to be filed, and the conveyances and assignments of such persons to be executed, in such forms respectively as are now used in the said Court, and not in the forms prescribed by this act; provided nevertheless, that all other things shall be done and shall take effect in the matters of such petitions according to the provisions in this act contained, except as aforesaid.

Court may permit, for a limited time, Petitions and Schedules to be filed, &c. in such forms as are now used.

XCI. And be it further enacted, that this act shall continue in force until the first day of *June* one thousand eight hundred and twenty-nine, and from thence until the end of the then next session of parliament.

Continuance of act.

FORM of Conveyance and Assignment.

THIS indenture, made the day of in the year of our Lord between an insolvent debtor, now a prisoner in the of the one part; and provisional assignee of the estates and effects of insolvent debtors in *England*, pursuant to an act of parliament passed in the seventh year of the reign of king *George* the Fourth, in that behalf, of the other part: whereas the said hath this day subscribed his [*or* her] petition to the Court for the relief of insolvent debtors, praying for his [*or* her] discharge by virtue of the said act; now this indenture witnesseth, that in obedience to the said act he [*or* she] the said hath conveyed, assigned, transferred, and set over, and by these presents doth convey, assign, transfer, and set over, unto the said as such provisional assignee as aforesaid, his successors and assigns, all the estate, right, title, interest, and trust of the said in and to all the real and personal estate and effects of the said both within this realm and abroad, in possession, reversion, remainder, or expectancy, except the wearing apparel, bedding, and other such necessaries of the said and his [*or* her] family, and the working tools and implements of the said not exceeding in the whole the value of twenty pounds, together with all deeds, evidences, and writings touching and concerning the said estate and effects, and every part thereof, and all future estate, right, title, interest, and trust of the said in and to all real and personal estate and effects within this realm and

abroad, which the said shall purchase, or which shall revert, descend, be devised, bequeathed, or come to him [*or* her] in possession, reversion, remainder, or expectancy, before he [*or* she] shall become entitled to his [*or* her] final discharge in pursuance of the said act; or in case the said shall obtain his [*or* her] discharge from custody, without any adjudication being made in the matter of his [*or* her] petition, then before he [*or* she] shall be at large and out of custody, together with all deeds, evidences, and writings touching and concerning the same and every part thereof, and all debts due or growing due to the said or to be due to him [*or* her] before he [*or* she] shall become so entitled or be so out of custody as aforesaid; to have and to hold, receive, and take all and every the said estate and effects of the said real and personal, in possession, reversion, remainder, or expectancy, of every nature and kind whatsoever, except as aforesaid; and all and every the said estate and effects which shall be so purchased by the said or which shall so revert, descend, be devised, bequeathed, or come to him [*or* her] as aforesaid, in possession, reversion, remainder, or expectancy, of every nature and kind whatsoever, conveyed, assigned, transferred, and set over, or mentioned, or intended, or directed by the said act to be hereby conveyed, assigned, transferred, or set over, with their and every of their rights, members, and appurtenances, unto the said his successors and assigns, according to the respective natures, properties, and tenures thereof, in trust nevertheless to and for the use, benefit, and advantage of the creditors of the said who shall be entitled to share in a dividend of the said estate and effects, under the provisions of the said act,

and to and for such other uses, intents, and purposes, and in such manner and form as are in and by the said act expressed of and concerning the same, as by the said act, reference being thereunto had, will more fully appear: Provided always, and these presents are upon this express condition, nevertheless, that in case the petition of the said   shall be dismissed by the said Court, then these presents, and the conveyance and assignment herein-before made as aforesaid, shall, from and after the dismission of such petition, be null and void to all intents and purposes, any thing herein contained to the contrary thereof in anywise notwithstanding. In witness whereof the said parties have hereunto set their hands and seals, the day and year above written.

Signed, sealed, and delivered by the above-named in the presence of }

Signed, sealed, and delivered by the above-named in the presence of }

RULES AND ORDERS

OF THE COURT FOR RELIEF OF INSOLVENT DEBTORS, IN ENGLAND.

The Court for Relief of Insolvent Debtors, on the Eighteenth Day of September, 1826.

IT IS ORDERED,

Attorney personally to accept Retainer and sign his Acceptance.

I. That in every case, the attorney shall personally, and not by his clerk, accept the retainer of a prisoner; and that the prisoner shall sign the retainer, and at the same time the attorney shall sign his acceptance thereof, in form following:

Form of Retainer,

The Court for relief of insolvent debtors.

I do hereby retain   to act for me as my attorney in the said Court, and I do hereby declare that he is employed by me at my own request.
Dated the   day of   182

and Acceptance thereof.

I   hereby accept the above retainer, which was signed by the said prisoner in my presence.

(Signed)

Proviso for Illness, &c.

Provided, That in case of the illness of such attorney, or of his absence from London, or the place where he practises, such retainer may be received and accepted for him by some other attorney of the Court, the cause thereof being stated in such acceptance.

Costs to be taxed and Allocatur delivered to Prisoner.

II. That the attorney of every prisoner shall cause his bill, where the same exceeds six pounds, to be taxed by the proper officer of the Court, and delivered

with the allocatur thereon to such prisoner one week at least before the hearing of the matters of his or her petition; and that in all cases where the bill of costs of any attorney of the Court practising for any prisoner in custody shall exceed the sum of six pounds, such attorney shall produce on taxation of the same an affidavit proving the payment of all sums of money charged in the same as paid out of pocket, and the truth of each and every other charge for any proceeding or attendance or letter charged therein, and that the same were actually necessary to the prisoner's discharge, and also that the sum of
and no more has been paid to the deponent on account of the said bill.

Attorney not to employ Gaoler, Prisoner, &c. as Clerk or Agent;

III. That no attorney shall directly or indirectly employ any gaoler, turnkey, prisoner, or other person confined or residing within any gaol or prison, as a clerk or agent to solicit retainers, or to transact any business whatever relating to proceedings in this Court, touching the relief or discharge of any prisoner, on pain of being removed from the files of the Court; and that no attorney shall continue to practise in the Court, while he shall himself be a prisoner for debt or otherwise.

nor practice while himself a Prisoner.

Petitions of Prisoners in London, &c. to be left at Office one clear Day before signing;

IV. That all petitions of prisoners confined in the prisons of *London*, *Middlesex*, and *Surrey*, excepting the gaol of *Kingston upon Thames*, shall be left one clear day before the same shall be signed, at the office of the Court, for examination by the proper officer, who will thereupon in every such case prepare the conveyance and assignment; and that all petitions shall be signed, and conveyances and assignments executed, by such prisoners in the presence of the proper officer of the Court, who will attend at the said prisons for that purpose, and for the purpose of

to be signed in presence of proper Officer.

taking affidavits, on Wednesdays and Saturdays, and on no other days; and if the fourteen days allowed for presenting petitions shall expire between such days of attendance, any such prisoner may sign his petition, and execute the conveyance and assignment, on the next day of attendance, without a special application to the Court:—And that the petition of every other prisoner in *England*, shall be signed, and the conveyance and assignment executed by him or her, in the presence of his or her attorney duly retained, or of the keeper of the gaol in which such prisoner shall be confined, and such attorney or keeper shall attest the same accordingly.

Petitions of Prisoners in Country to be signed in presence of, and attested by, Attorney or keeper of Gaol.

V. That in all cases there shall be filed with the petition a certificate from the gaoler, of the day or days, and cause or causes of detainer against the prisoner; and if the prisoner shall be in custody solely on a surrender in discharge of his bail, there shall also be filed an office-copy of the præcipe in the action.

To file with Petition a Certificate of Day and Cause of Detainer; and to file Præcipe.

VI. That in all cases there shall be filed with the petition an account in writing, signed by the prisoner, and attested by the officer or other person attesting the petition, of all the real and personal estate and effects of such prisoner then in his possession or under his control, in order that the same may be duly ascertained and given up to the provisional assignee; and that the said account shall be signed, attested, and filed in duplicate.

To file with Petition an Account of Estate and Effects, in Duplicate, signed and attested.

VII. That every application to the Court for leave to file petition after the expiration of the fourteen days allowed for that purpose, shall be supported by the affidavit of the prisoner; in which shall be stated the degree, profession, or trade, and the last place of abode of such prisoner; and the time of his or her first arrest in the action wherein he or she is then de-

Substance of Affidavit on Motion to Petition after 14 Days.

tained, and the time of commitment to the prison where he or she is then confined; together with a statement of all monies paid or spent, and of all property spent, sold, made over, assigned, disposed of, or in any manner parted with by him or her since such first arrest, and in what manner, and to whom; and also the cause of not having presented such petition within the said fourteen days; and such application shall be made either by petition with the said affidavit annexed, or by motion in Court with the said affidavit exhibited; and there shall also be annexed or exhibited such account in writing of estate and effects, as is in all cases required to be filed with the petition; which account shall be verified by the said affidavit, and on such application being granted, the duplicate of the said account shall be delivered to the officer of the Court, at the time of leaving the petition in town cases, and at the time of filing the petition in country cases.

To file with Schedule Inventory and Valuation of excepted Articles; with Certificate of Appraiser:

VIII. That in all cases there shall be filed with the schedule an inventory of the excepted articles, with a valuation of the same respectively; to which shall be added a certificate of the appraiser signed by him in form following;

Form of Certificate.

I certify that I have on the day of been at the* residence of the said prisoner at and have then and there seen examined and valued each and every of the above mentioned articles; and that the said sum of £ is a just and fair value of the same:

I certify also, that there was on the same premises, besides the said articles, the following property;

[here add a description of such property (if any), and state the representations made concerning it by the insolvent, his family, or any person on the premises.]

* Late residence of the said prisoner; or residence of the said prisoner's family, as the case may be.

IX. That all such appraisements in *London* or within ten miles thereof, shall be made by one of the brokers of the Court; who are required to complete each appraisement and to have it ready for delivery to the prisoner or his attorney, not later than on the fourth day from the day on which notice to make the same shall have been left with the clerk attending at the broker's office.

Appraisements in London to be by a Broker of the Court.

X. That every prisoner shall with his schedule file a general balance sheet of his receipts and expenditures from the date of the earliest debt in his schedule up to the time of signing his petition, including all property of every kind, with description of the same, which he may have had at any time during that period; together with the time when, persons to whom, and consideration for which any part thereof shall have been disposed of or parted with by him; and that in the said general balance sheet reference may be made, for the particulars of any matter, to the special balance sheet contained in the schedule; but that in the schedule reference may not be made to such general balance sheet: and that the prisoner shall also state in the said general balance sheet the cause of his or her insolvency.

To file with Schedule, General Balance Sheet.

XI. That every schedule and balance sheet, and every amendment thereto,* shall be read over to the prisoner by or in the presence of the attorney named in the retainer, before such prisoner shall sign the same; and that the balance sheet, and every side of every sheet of the schedule, and of any amendment thereof, shall be signed by the prisoner; and such signature shall be attested by the said attorney, and not by any clerk, and such reading over, signatures, and attestation shall be verified by the affidavit of such attorney to be filed with the schedule; for preparing

Schedule and Balance Sheet to be read over to Prisoner by Attorney, and to be signed by Prisoner, (the Schedule on every Side of every Sheet.)

and swearing which affidavit no charge shall be made:—provided that in case of the illness of such attorney, or of his absence from *London*, or the place where he practises, the matters aforesaid may be done by some other attorney of the Court; in which case the cause thereof shall be stated in such attestation, and also in such affidavit as aforesaid.

Application to file Schedule after 14 Days to be supported by Affidavit.

XII. That every application to the Court for leave to file schedule after the expiration of the fourteen days allowed for that purpose, shall be supported by the affidavit of the prisoner, in which shall be stated the cause of not having filed such schedule within the said fourteen days; and if the prisoner shall have filed his petition without a special application to the Court, the said affidavit shall also contain such statement concerning the arrest, commitment, and property of the prisoner as is required in an affidavit made on application for leave to file petition.

When leave obtained to file Schedule or Petition, in Country, Affidavit to be annexed to Schedule.

XIII. That in every case to be heard by a commissioner on circuit, or by justices in *Wales* or *Berwick-upon-Tweed*, in which the prisoner shall have obtained leave to file petition or schedule, or both, on affidavit made for such purpose, an office copy of such affidavit or affidavits shall be obtained from the proper officer, and annexed to the schedule to be lodged therewith with the clerk of the peace or other person appointed to receive the same according to the statute.

Delivery of Order for Hearing.

XIV. That every order for hearing by a commissioner on circuit, (the circuit appointments having been gazetted) also every order for hearing by justices of the peace, shall be ready for delivery at the opening of the office on the second day (exclusive of *Sunday*) after the filing of the schedule; but that the same shall not be issued before that time: and that in every such case the duplicate of the petition and

schedule shall be given out with the order for hearing, and the warrant of attorney shall be prepared and ready to be given out on the seventh day after the issuing of such order:—provided, that no order for hearing by a commissioner on circuit shall be issued later than the twenty-eighth day before the day notified in the Gazette for the attendance of the commissioner; and that no order for hearing by justices of the peace shall be issued later than the twenty-eighth day before the day to be appointed for such hearing.

Notice to Creditors and Services thereof.

XV. That henceforth notice of the filing of every petition and schedule, and of the time and place appointed for the hearing of the matters thereof, shall be given to creditors and persons claiming to be creditors, whether their debts are admitted or disputed in the schedule, in the following manner:

1. In all cases, by PERSONAL SERVICE of a copy of the order for hearing, made twenty-one days at least before the day of hearing upon the attorney or agent of every detaining creditor suing by attorney, and upon every detaining creditor suing in person: also upon every creditor for one hundred pounds or more, resident in *England*: also upon every creditor for five pounds or more, resident or carrying on business in *London* or within ten miles thereof.

N.B. Delivery of the said copy to the wife, clerk, or servant of the party, at the usual place of abode or business of such party, or, where the party is assignee of a bankrupt, to the solicitor of such assignee, or his clerk or servant at the usual place of business of such solicitor, shall be deemed equivalent to PERSONAL service.

2. In all cases, by sending, twenty-five days at least before the day of hearing, a copy of the order

for hearing by the general post, rightly addressed, to every creditor for five pounds or more resident in *England*, excepting such as are above-mentioned, and to every creditor for that amount resident in *Scotland* or *Ireland;* or by such personal service as is above-mentioned, made upon any such creditor.

3. In all cases, by advertisement published in the *London Gazette* twenty-one days at least before the day of hearing.

4. In cases where the prisoner is described in the schedule as having resided in *Scotland* or *Ireland*, also in cases where four or more of the creditors of the prisoner are resident in *Scotland* or *Ireland*, by advertisement published twenty-one days at least before the day of hearing in the *Edinburgh* or *Dublin Gazette*, as the case may be.

5. In cases to be heard by a commissioner on circuit, or by justices in *Wales* or *Berwick-upon-Tweed*, by advertisement published, twenty-one days at least before the day of hearing, in some newspaper most usually circulated in the county or place where the case is ordered to be heard.

6. In cases to be heard by the Court, where the last usual residence of the prisoner was in some county or place other than in *London*, *Middlesex* or *Surrey*, by advertisement published twenty-one days at least before the day of hearing in some newspaper most usually circulated in the neighbourhood of such last usual residence.

7. In every case to be heard by a commissioner on circuit or by justices, of a prisoner removed under the act 7 Geo. 4. c. 57. sec. 65, or by the Court, of a prisoner whom his creditor, after order obtained, has failed to remove, notice of the hearing shall be given by advertisement published ten days at least before

the day of hearing, in the *London Gazette*; and also, where, on an original hearing notice in any newspaper in *England* would be required, by advertisement published in such newspaper seven days at least before the day of hearing: and also by service of the order for hearing, seven days at least before the day of hearing, upon all detaining creditors, and all creditors (if any) who entered notice of opposition for the former hearing: UNLESS in any case the Court shall otherwise direct by special order concerning the notice in such case.

8. Where at the hearing notices shall appear to have been served on any creditor not in sufficient time, and any other or further hearing of the case shall be appointed for that or any other cause at a subsequent time, notice of such last-mentioned appointment shall be given to the said creditor in such time as will, together with the time of giving the former notice, complete the regular period of twenty-one or twenty-five days, as the case may be; which being done, such creditor shall be deemed to have had due notice: provided, that such second notice shall in no case be effectual, if served less than seven days before the day of hearing in cases requiring personal service, and nine days in cases of service by the post; nor unless the prisoner shall consent to waive notice of opposition to be made at such hearing: and that notice for the original hearing shall likewise be of no effect, if served less than seven and nine days in such cases respectively.

9. Where the service has been defective, and the creditor shall appear against the prisoner at the hearing he shall be deemed to have had due notice, unless the Court, commissioner or justices shall otherwise direct.

Proof of Notice and Service.

XVI. That services shall be made and that proof of notice shall be given, and affidavits be made and filed in manner following:

1. No proof shall be required at the hearing, of advertisement in the *London Gazette*, which is ordered to be inserted always by the officer of the Court, and by no other person.

2. Proof of all other advertisements shall be made by production of the Gazette or newspaper in which the same were published.

3. Proof of all services, whether personal or by post, shall be made by affidavit, to the satisfaction of the Court, commissioner, or justices.

4. All personal services in *London* and within ten miles thereof shall be made by the messengers of the Court, who shall make affidavit of the same.—The copies of orders for hearing to be served, duly addressed, and numbered according to the number in the schedule, must be delivered to them three clear days at the least (exclusive of *Sunday*) before the last day of service, in cases for original hearing, and two clear days at the least (exclusive of *Sunday*) before the last day of service, in cases for adjourned hearing; and at the same time shall be delivered the original order for hearing, together with a list in duplicate of persons to be served, the entries in which lists shall correspond with the directions written on the notices.

5. All services by the post, together with the address and delivery of each copy of the order for hearing so sent, and the post office into which the same was put, shall be verified by affidavit of a messenger or attorney of the Court, or clerk of such attorney; and the name of the messenger or attorney so sending the same shall be written on every such copy.

6. In cases to be heard by the Court, all such affidavits and advertisements as aforesaid (excepting those in the *London Gazette*) shall be filed at the office eight days at least before the day of hearing in original cases, and two clear days at least (exclusive of *Sunday*,) before the day of hearing in adjourned cases.

7. In cases to be heard by a commissioner, all such affidavits and advertisements as aforesaid (excepting those in the *London Gazette*) shall be lodged between the hours of twelve and four on the day preceding the day notified in the *London Gazette* for the attendance of the commissioner, and in cases to be heard by justices, between the same hours on the day preceding the day of hearing, (not accounting *Sunday*) at the office of the clerk of the peace, or his deputy approved of or other person appointed for that purpose by the Court according to the act 7 G. 4. c. 57. sec. 77. in the town or place at which the hearing is appointed.

XVII. That notice of intention to oppose a prisoner's discharge be given in manner following:

Notice of Opposition.

1. In cases to be heard by the Court, by entry made in the proper page and column of the book kept for that purpose at the office of the Court, between the hours of ten in the forenoon and four in the afternoon, three clear days before the day of hearing, exclusive of *Sunday* and exclusive both of the day of entering such notice and of the day of hearing.

N. B. Entrance to the office in Portugal Street, Lincoln's Inn Fields.

2. In cases to be heard by a commissioner or justices, by giving a notice of such intention in writing to the prisoner, three clear days before the day of hearing, exclusive of *Sunday*, and exclusive both

of the day giving such notice, and of the day of hearing.

3. In cases of hearing after removal, or failure of removal, notice of opposition shall be given in manner aforesaid one clear day before the day of hearing; unless where such notice was given for the original hearing, or where the prisoner may waive the same on giving short notice of the hearing. See above, XV. 8.

Days to inspect Petitions, Schedules, and Books: and Notice to produce Books at Hearing.

XVIII. That the petitions and schedules, and the books and papers filed therewith, shall be produced by the proper officer for inspection and examination, on Mondays, Wednesdays, and Fridays, until the last day of entering opposition between the hours of ten and four, and on no other days:—and notice to produce any such books or papers at a hearing by the Court must be given to the officer having the custody thereof on or before the day preceding the day of hearing.

Exhibits to Affidavits to be marked by Person before whom sworn.

XIX. That all papers annexed to any affidavit, and referred to in the same, shall be marked as exhibited by the commissioner or other person, before whom such affidavit shall be sworn.

Appointment of Assignees.

XX. That the practice concerning the appointment of assignees, in cases where no assignee has been appointed before the hearing, shall be as follows;

They may be appointed by the Court or a commissioner at the hearing:

They may be appointed by the Court, having been previously nominated

1. by the justices in Wales, or Berwick-upon-Tweed, at the hearing by them:

2. by a majority in value of creditors, whose debts shall be admitted in the schedule;

3. by a majority in value of creditors, who shall meet in pursuance of such notice given by advertisement or otherwise, as shall be in each case directed by the Court or the proper officer for that purpose.

Persons so nominated as aforesaid may apply to be appointed assignees by petition to be filed at the office of the Court, the nominations of and acceptances by such persons, together with all notices, proceedings, and necessary signatures, being duly proved by affidavit;—every such person must also state by affidavit, whether he has been appointed in any other case; and if so, whether he has filed his account in such case.

No person can be appointed who is not a creditor: and no person will be appointed, who, as assignee in any other case has failed in any of the duties required of him; nor will any female be appointed.

Provisional Assignee to sell Property.

XXI. That the provisional assignee shall, in every case of a prisoner who has petitioned the Court and duly executed a conveyance and assignment to the said provisional assignee, sell all goods, chattels and personal estate of such prisoner, of which the said provisional assignee shall take possession according to the statute;—and out of the proceeds thereof shall defray in the first place all such costs and expenses of taking possession of and selling the same as shall be allowed by the Court; and shall account for the produce of such sale to the Court.

Certificate to be obtained in cases on circuit, of Property being given up to Provisional Assignee.

XXII. That in every case to be heard by a commissioner on circuit, in which there shall have been any property in the possession or under the control of the prisoner, to be given up to the provisional assignee, there shall be obtained and produced at the hearing a certificate from the provisional assignee,

or his agent duly authorised, that such property has been duly given up or accounted for.

BY THE COURT.

REGULATIONS, &c. OF OFFICE.

ATTORNIES applying for admission to practise in the Court for relief of insolvent debtors, must in terms state that they intend themselves bonâ fide to practise, and that the application is not made at the instance of, or for the purpose of employing any particular person as clerk or agent: and as the Court does not admit discharged insolvents, the fact of never having taken the benefit of any insolvent act must be stated.

Such applications to be accompanied by a recommendation and *testimonials* of the *personal respectability* of the parties, signed by at least two barristers. And as to country attornies, the testimonials must be by practising barristers of the circuit within which the applicants reside, or if in Wales, the recommendation may be by the Court of quarter sessions, or by practising barristers of the circuit.

NOTE.—When the Court shall have granted the application, the admission in this Court will be made out on production to Mr. Lamb in town cases, and to Mr. Richards in country cases, of the admission in some one of the courts at Westminster, and the annual certificate of payment of stamp duty for the current year.

NOTICE.—That whereas of late many schedules and the papers annexed thereto have been filed in a very imperfect and defective state; and in order that the officer may more conveniently inspect and examine

the same, NO SCHEDULE will, after the last day of the present month, be received later than two o'clock on each day.

J. MASSEY.

March 18, 1825.

THE PRACTICE OF WITHHOLDING AFFIDAVITS OF SERVICE having been attended with much general inconvenience and great delay to insolvents in obtaining their discharge from prison, the commissioners have directed the chief clerk to give public notice, that it has been deemed expedient to put a stop to the same; and that no attorney will be permitted, under any pretence whatever, to withhold any affidavit or other document necessary to the due hearing and discharge of an insolvent. But in order that the attorneys of the Court may not be injured by any sudden alteration in the practice, this notice will not affect the cases of petitions filed prior to the date hereof.

All Affidavits of Service must now be filed according to the new Rule of Court; and none can be put in at the Day of Hearing. *This will apply also to consents.* The necessity for which being always known at least 21 days before the Hearing, the Court will no longer tolerate the practice of delaying to obtain them to the last day.

It is for the attorney, before he accepts the retainer, to consider the prudence of engaging in the conduct of an insolvent's business, but when once he has so engaged, he must (after he has filed the Schedule) proceed without any delay by reason of nonpayment of costs or otherwise.—*June* 12, 1826.

Instructions to the Messengers concerning the course to be observed by them in making services and returns.

September, 1826.

1. On the delivery of the order for hearing with the lists and copies to be served, the day of such delivery shall be indorsed on the order.

2. Each messenger is required to examine the copies which he is about to serve, with the order for hearing,

before he takes them from the messenger's office, and at the same time to certify that he has done so by writing his name on the back of the order.

3. Every notice shall be served on one of the four days (exclusive of Sunday) next following the day when the same shall have been delivered for service, in cases for original hearing; and on one of the two days (exclusive of Sunday) next following the day of such delivery in cases for adjourned hearing.

4. The return of services shall be completed at twelve o'clock on the second day (exclusive of Sunday) after the said four days or two days as the case may be; and shall be made by entry on one of the lists delivered; which list, with the returns duly entered therein, shall be ready to be given out on application at the period above mentioned.

5. Each messenger in making his return, shall not only enter the time and manner of making or endeavouring to make the service required, but shall also note any error which he may have discovered in the name, address or description of the creditor or person to be served.

6. If from inaccuracy of the direction, or other cause, a service shall not be successfully executed before the time for giving out the return list, the giving it out on application shall not be delayed on that account.

7. Affidavits of services made by the messengers shall be prepared and sworn by them; and in town cases shall be filed by them at the office of the Court on the seventh day after the day of the return in original cases, and on the day following the day of the return in adjourned cases: and in country cases shall be ready to be given out on application at twelve o'clock on the seventh day after the day of the return

in original cases, and at the same hour on the day following the day of the return in adjourned cases.

8. Copies of orders delivered for service shall in no case be given back; but if application is made to correct an address, the same shall be permitted in the messenger's office.

9. The duplicate lists shall be preserved, and no correction made of them.

10. Each messenger shall keep an account of services and returns made by him, in a book or books to be produced when required by the Court.

11. The messenger's office shall be open every day from ten o'clock till four; and not later, excepting to the messengers themselves.

NOTICE.

Schedules in which the NAME and *address* of the attorney for the detaining creditor are not inserted will be uniformly rejected.

January 15th, 1827.

It is ordered, that henceforth petitions shall not be received, in which the necessary blanks are not filled up: as for instance, the time or place of first arrest at suit of detaining creditor, the statement of certificate, or no certificate where a bankruptcy is alleged: discharge, or no discharge where a petition to the Insolvent Court is alleged, &c.

Mr. Massey cannot undertake to read to the Court, petitions and affidavits for time to file, &c. &c. until the day next but one, after the same shall have been left at the office.

Sunday no day.

1st Feb. 1827.

COSTS.

In all cases of taxation of costs in effecting sale of insolvent's effects, under the authority of the provisional assignee, it will be necessary to produce to the officer taxing costs, the return of the provisional assignee, with an account of the proceeds of the sale and expenses paid thereout, verified by affidavit, together with the auctioneer's account, or catalogue of the sale, also verified by his affidavit, and an affidavit of the attorney, proving the payment of all charges for money paid out of pocket, and the truth of all other charges for attendance, journeys or letters charged therein.

H. C. RICHARDS.

For the Attornies of the Court.

It is observed that in many of the lists delivered to the messengers, the attornies do not leave a blank line between each entry of a creditor and that which follows it, as required.

It is desired that this may in future be attended to.

Whereas a mistake is frequently made in the indorsement on the schedule, of the date of filing petition in town cases; the attornies are informed, that it is not intended that the day of lodging the petition previous to the same being signed, should be entered in any case.

The printed form requires two dates: the day of signing petition, and the day of filing petition, inasmuch as in country cases the signing and filing will be on different days, but in town cases the signing and filing must always be on the same day, and may therefore be bracketed under one date.

PROCEEDINGS BY INSOLVENTS.

Prisoner in custody for certain debts may petition.

AN insolvent in actual custody, within the walls of a prison, upon any process whatsoever, for or by reason of any debt, damage, costs, sum or sums of money, or for or by reason of any contempt of any court whatsoever for non-payment of any sum or sums of money, or of costs taxed or untaxed, either ordered to be paid, or to the payment of which he would be liable in purging such contempt, or in any manner in consequence or by reason of such contempt, may at any time within the space of fourteen days next after the commencement of such actual custody, whether such commencement shall have been in the same prison, or in any other prison, or the rules or liberties of any prison; or afterwards, if the Court shall think reasonable to permit the same, petition the Court, for his discharge according to the provisions of the act. 10 s. 7 G. 4. p. 86.

But not if in custody at the suit of the crown, &c.

The act does not extend to discharge any prisoner seeking the benefit thereof, with respect to any debt* due to His Majesty, or to any debt or penalty with which he shall stand charged† at the suit of the crown, or of any person for any offence committed against any act of parliament, relative to any branch of the

* A person in custody on process issued on an estreated recognizance, may apply to the Court of Exchequer on affidavit of facts and petition, and the Court, if it shall see fit, will discharge the individual without suing out a *quietus*, provided the case does not relate to the revenue, or assaulting the officers of customs or excise. 4 G. 3. c. 10.

† See 75 s. 7 G. 4. c. 57. p. 150, as to persons in custody under certain extents, and mode of relief.

public revenue*, or at the suit of any sheriff or other public officer, on any bail bond entered into for the appearance of any person prosecuted for any such offence, unless three of the commissioners of His Majesty's treasury certify their consent.

A person in custody at the suit of the crown *alone*, cannot, without the consent of the lords of the treasury, petition the Court, as the Court cannot adjudge him "future liberty of his person against the demand for which he is then in custody."

or on certain attachments.

Neither can a person in custody solely on an attachment for non-payment of money *and* non-delivery of deeds, &c. petition, as the Court cannot *discharge* him *from custody*, as to such attachment.

Nor can a person in custody solely on an attachment for *non-appearance* to a subpœna, notwithstanding the subpœna may have issued for the recovery of a debt, petition ; such attachment not being an attachment for contempt for non-payment of the money, but for a contempt for non-obedience to the subpœna.

Documents to obtain order for hearing in town.

The necessary documents for an insolvent to obtain an order for hearing, *before the Court*, are as follow.

Notice to the keeper of intention to petition :— 10 s. p. 87.

Retainer :—1st Rule of Court, p. 165.

(*) Estate papers :—6th do. p. 167.

Copy of cause :—5th do. p. 167.

If in custody solely on render in discharge of bail, an official copy of the precipe :—5th do. p. 167.

If the 14 days limited by 10 s. p. 86 are expired, a

* By the 53 G. 3. c. 21, the commissioners of customs and excise are authorized to make an allowance not exceeding seven-pence halfpenny, and not less than four-pence halfpenny per day, for the necessary subsistence of any poor person confined under any Exchequer process for the recovery of duties, penalties, &c. relating to the departments of customs and excise.

special petition and affidavit, with estate paper annexed:—7th Rule of Court, p. 167.

(*) Petition:—10 s. p. 86.

Assignment:—11 s. p. 87.

(*) General balance sheet:—10th Rule of Court, p. 169.

Valuation of excepted articles:—8th do. p. 168.

If the 14 days limited by 40 s. p. 113, are expired, a special petition and affidavit.

(*) Schedule:—40 s. p. 113.

Affidavit of seeing Schedule and Balance Sheet signed:—11th Rule of Court, p. 169.

In the country.

In country cases, the like documents are required, those with a star (*) opposite each, being to be signed in duplicate:—when the country practitioner transmits the petitions without the schedules, the petitions must be accompanied with all the documents except the general balance sheets, valuation, and affidavit of seeing schedules and balance sheets signed.

NOTICE TO KEEPER.*

Pursuant to the act for relief of insolvent debtors in England.

To Mr. Y. Z. keeper of the gaol or prison of L. in the county of L.

Take notice that I, E. T. late of C. in the county of D. maltster, intend to present a petition to the Court for relief of insolvent debtors in England, praying to be discharged from custody, and have future liberty of my person against the demands† for which I am now in custody, and against the demands of all other persons who are or claim to be my creditors, according to the provisions of the statute in that behalf. Dated this 1st day of April, 1827.

Yours obediently, E. F.*

* See 10 s. page 87.

† Some forms state at whose suit prisoner is in custody; the act does not require such statement.

RETAINER.*

The Court for relief of insolvent debtors.

I do hereby retain C. D. to act for me as my attorney in the said Court, and I do hereby declare, that he is employed by me, at my own request.

Dated the 1st day of April, 1827.

I, C. D. hereby accept the above retainer, which was signed by the said prisoner in my presence. } E. F.

(Signed) C. D.

ESTATE PAPER.†

The Court for relief of insolvent debtors.

An account of the real and personal estate and effects of E. F. late of C. in the county of D. maltster, now in his possession, or under his controul, and to be given up to the provisional assignee.

Over and above the articles intended to be excepted by me in my schedule, not exceeding the value of twenty pounds,

I have household furniture at No. 2, B. Street, L.

Dated this 1st day of April, 1827.

Signed in the presence of (having been first read over to the insolvent) } E. F.

C. D.

The intent of the estate paper being to enable the provisional assignee, or those acting under his directions, to take possession of the property mentioned therein, the paper must always state where, and what the property to be taken possession of is, or it will be refused, and consequently the filing the petition delayed.

Estate papers will be rejected, which state property

* See 1st rule of Court, p. 165. † See 6th Rule of Court, p. 167.

as *liable* to distress for rent; liability is nothing, and unless actually distrained, the provisional or other assignee will take possession, and remove the same.

COPY OF CAUSE.*

This document is made out by the keeper of the prison. The certificate thereto must state the day and year when insolvent committed to his custody; the date must not be interlined or written on an erasure. The keeper or his deputy signs such certificate.

PRECIPE.†

This is obtained at the office of the court whence the process issued, on which the insolvent was arrested: it must be marked as an office copy.

SPECIAL PETITION AND AFFIDAVIT for leave to file Petition.‡

In the Court for relief of insolvent debtors.

In the matter of E. F. a prisoner in L. in the county of L.

E. F. late of C. in the county of D. maltster, the above named prisoner, maketh oath and saith that he is now a prisoner for debt in the said gaol at the suit of H. I. for the sum of fifty pounds, and was committed to the said gaol on the 1st day of March, and that he was first arrested at the suit of the said H. I. on the 1st day of February last, and that the following statement, *and account* § *hereunto annexed are respectively true.*

* See 5th Rule of Court, p. 167. It is advisable for the attorney to have this document before him when making out the petition, and carefully to compare the petition with the copy of cause.

† See 5th Rule of Court, p. 167.

‡ See 7th Rule of Court, p. 167.

§ The Estate Account; which must be marked as an exhibit by the Commissioner.

NOTE:—In country cases the attorney should furnish his agent with the petitions under the act and the necessary papers to be filed therewith at the same time he transmits the special petition and affidavit; as the Court usually grants only four days time to file petitions.

DR. Monies and other property had, possessed, or received by me at the time of and since my *first arrest* aforesaid.	£	s.	d.	CR. Present statement of the same, whether spent or disposed of; and if so, when, how, and to whom.	£	s.	d.
When arrested, I had the sum of	30	0	0	I am still in possession of the household goods and furniture mentioned on the DR. side.			
7th March, 1827, received of Mr. M. N. of, &c. a creditor	15	0	0	I have expended in maintenance of self and family since my arrest....................	20	0	0
I was, at the time of my arrest and still continue, possessed of household goods and furniture				7th March, 1827, paid rent to Mr. O. P. of, &c........	12	10	0
				8th March, 1827, paid taxes (king's and parochial)........	3	0	0
				Remain in hand	9	10	0
£	45	0	0	£	45	0	0

and that, except as herein set forth, this deponent hath not paid or spent any monies, and hath not spent, sold, parted with, made over, assigned, or disposed of any property whatever since his said first arrest; and that the cause of this deponent not having presented his petition within the time allowed by the statute was [state the reason.]*

†Sworn at the gaol of L. aforesaid in the county of L. this 1st day of April, 1827, before me, } E. F.

Q. R.

a Commissioner for taking affidavits in the Court of King's Bench, at Westminster.

* The reason stated in the affidavit whereby the applicant has not petitioned within the fourteen days after committal, must be clear and positive, so that, if untrue, an indictment for perjury will lie; there must be nothing equivocal or uncertain; therefore, if an insolvent states the reason why he did not apply within the fourteen days, to be an expectation of compromising, he must name the creditor, the nature of the expectation, and what steps, if any, were taken to effect the same; or, if he states it was want of funds, and that a friend hath since furnished them, he must set out the name, place of abode, and description of the person so assisting him.

† If the insolvent is a marksman, the jurat must be special. See page 210.

To the Court for relief of insolvent debtors.

The humble petition of E. F. late of C. in the county of D. maltster, a prisoner for debt in the gaol of L. in the county of L.

Sheweth,

That your petitioner having omitted to file his petition in your honourable Court within the time allowed by the statute, humbly prays that he may be permitted to file the same, upon the grounds and for the reason set forth in the affidavit of your petitioner accompanying this petition.

And your petitioner shall ever pray, &c.

E. F.

The above special petition and affidavit should be on a printed form.*

The application is made by motion, or, by petition only.

If the application is by petition, the same is now to be left one clear day in the office of the Court: in country cases the necessity of leaving petitions at all in the office, would frequently be the occasion of insolvents losing the benefit of a circuit if the agent did not give briefs to counsel.†

Where insolvent does not petition within three months.

Where the insolvent does not apply within three months after his committal, the Court generally orders

* By 13th Rule of Court, p. 170, in all cases to be heard before a Commissioner on the circuit, an office copy of the affidavit is to be annexed to the schedule lodged with the clerk of the peace.

† It is desirable that some other arrangement should, if conveniently practicable, be made in respect to these applications, especially in country cases, as the expense of counsel's fees, and the consequent attendances, are the occasion of continual complaints by the country practitioner. The Chief Clerk has too many similar matters placed in his hands; probably a better mode, may be struck out.

a rule on the detaining creditor to shew cause, why the insolvent should not have leave to petition: the usual course has been, where the creditor shewed cause, to grant the insolvent leave to file his petition on the condition of paying the costs of shewing cause.†

To the Court for relief of insolvent debtors.

PETITION.

The humble petition of E. F. late of C. in the county of D. maltster,

Sheweth,

That your petitioner is now a prisoner for debt in *the gaol of L.* in the *county of L.* and is there detained at the suit of *H. I.* for the sum of *fifty pounds*, and that your petitioner was first arrested in the said suit at *M.* in the county of *L.* on the *first* day of *February one thousand eight hundred and twenty-seven, and gave bail to the sheriff*, and was committed to the said *prison* on the *first* day of *March, one thousand eight hundred and twenty-seven, in discharge of the bail bond;*

*and that your petitioner did *never* petition *any* court for his discharge under *any* act for the relief of insolvent debtors;

*and that your petitioner did *never* petition *any* court for his discharge under the act commonly called the lords' act;

† It has become the practice among those who are aware of such condition, to oppose these applications merely to put costs in their pockets: it is therefore some relief to know the present act justifies the Court in refusing costs in such cases, however specious the pretence, see 3 s. 7 G. 4. p. 81. "Provided always, that the said Court, or any commissioner thereof, shall not have the power of awarding costs against any person or persons whomsoever, *except* in such cases only where such costs are hereinafter *expressly mentioned and permitted* to be awarded by this act."

*and that your petitioner was *never* declared a bankrupt;
*and that your petitioner has given notice in writing to the keeper of the said *Gaol* of *L.* of his intention to present this petition:
your petitioner therefore humbly prays your honourable Court that he may be discharged from custody and have future liberty of his person against the demands for which he is now in custody, and against the demands of all other persons who are or claim to be creditors of your petitioner, according to the provisions of the statute in that behalf.

And your petitioner shall ever pray, &c.

E. F.

†Subscribed by the said prisoner on the 1st day of April, 1827, in the presence of

C. D. attorney of the court.

If the prisoner is sued by a name differing in any particular from his proper name, he must state it at the head of his petition, and all the other papers, thus: Edward Fentham sued by the name of Edward Fentom; and if sued with another person, that fact must also appear and may be in a parenthesis (with one P. S.); should he have contracted debts by any name, except that by which he was baptized, he will state his baptismal name first, then the alias, and the name by which he was sued; thus: Edward Fentham, otherwise Edmund West, sued by the name of Edward Fentom.

**** Under these several heads the blanks are to be filled up negatively or affirmatively according to the fact; if affirmatively, with dates, and stating whether petitioner obtained his discharge or certificate, as the case may be:—see notice of 15th January, 1827, p. 181.

† If the insolvent is a marksman, there must be a special attestation, see p. 220.

The onus lies on the insolvent to prove the truth of his petition. In common cases, therefore, the copy of cause and the gaoler's certificate proves the place where confined, the time when first charged in custody, name of the person at whose suit he is detained, and the sum of money, and costs, for which he is detained; and his own oath, at his peril, the other allegations. Where the insolvent has been discharged within five years by an insolvent act, or been bankrupt, he must shew to the satisfaction of the Court, or commissioner, or the justices, if in Wales, that his case comes within one of the exceptions in the 64 sec. p. 135. The examination of the insolvent, and his books, are generally deemed sufficient, but special circumstances may render it necessary for the insolvent to be provided with other evidence.

It has been held that contracting debts by means of accommodation bills—becoming surety or answerable for other persons—debts incurred for children at boarding-school—horse-hire, (unless absolutely necessary in his business,) and the like; cannot be said to be debts necessarily incurred, so as to intitle an insolvent who has been previously discharged within five years, again to avail himself of the benefit of the act, under the 64th section.

In cases to be heard before the Court, only one petition is necessary, which is to be filled up, an estate account and copy of cause annexed, and left with the provisional assignee, pay five shillings, and he procures the signature to the same; also to the assignment.

In country cases, a duplicate petition on parchment is necessary.

The practice has been, until lately, not to permit two petitions to be on the file at the same time; and

if the first petition was not dismissed before the second petition filed, the Court dismissed the second petition and all proceedings thereon; recently, however, on applications to dismiss petitions the Court referred the same to the Commissioner on the circuit: the safe course is to make the application in the first instance: therefore where an insolvent has received his discharge subsequent to filing a petition, and is again in custody, he should apply to the Court to dismiss such petition before he files a new petition, and if the fourteen days since his second imprisonment have expired, a separate application should be made for leave to file a new petition: the application to dismiss the first petition is made on the affidavit of the insolvent, stating the date of his first custody; the time of filing his petition; the proceedings had thereon; whether notice of opposition had, or had not, been given; if notice given, by whom; who by name attended to oppose; the date when he was discharged, and the fact of his subsequent incarceration. A certificate is to be obtained from the provisional assignee that no sub-assignee has been appointed; such certificate accompanies the affidavits, &c. also a copy of the original cause and a certificate of the gaoler as to the fact of discharge.

ASSIGNMENT

In town cases the provisional assignee prepares the assignment; in country cases the insolvent's attorney prepares it; in the latter case, care must be taken that the insolvent's name and last place of abode previous to imprisonment, together with his trade or profession, is truly described; that no erasure, alteration, or interlineation is therein; particularly of the date, which must be *even* with the date of the petitions:

the attesting witness* must put his description after his name.

The assignment may be had printed, with blanks for names and dates.

VALUATION. All appraisements are to be made in London or within ten miles thereof, by one of the brokers† of the Court.

In the country the valuation should be made and signed by a sworn appraiser; (see 8th Rule of Court, p. 168,) a stamp is not necessary; the articles must not be lumped, as the brokers term it, but the value stated separately, similar to the following form, and so clearly described that a stranger might by the assistance of the valuation alone, attend and point them out. The excepted articles must not exceed £20. in value.‡ Where the residence of the insolvent is so far distant from the gaol that the appraiser, who makes the valuation of the insolvent's apparel, &c. at the gaol, cannot conveniently attend at his residence, an inventory may be taken at the latter place by an appraiser residing on the spot; both the appraisements must not, when added together, exceed £20.

* The same person who attests the petition, should also attest the assignment, which must either be the insolvent's attorney, or the keeper of the prison:—see 4th Rule of Court, p. 167.

† Brokers' office is No. 8, Lyon's Inn: the appraisement is to be ready, not later than the fourth day from the time it is bespoke:—see 9th Rule of Court, p. 169.

‡ 70th Section, p. 143. Any prisoner, with intent to defraud his creditors, wilfully and fraudulently excepting out of his schedule, as wearing apparel, &c. property of greater value than 20*l.* guilty of a misdemeanour, and subject to three years imprisonment and hard labour; and any person aiding and assisting, liable to the same punishment.

The Court for relief of insolvent debtors.

An Inventory of the wearing apparel, &c. of E. F. late of C. in the county of D. maltster, a prisoner for debt in the gaol of L. in the county of L.†

The act of parliament allows the insolvent, wearing apparel, bedding, and other small necessaries, not exceeding the value of 20*l*.

Each article to be separately valued and the sum affixed thereto.

	£.	s.	d.
One coat, 10s.; one waistcoat and one flannel waiscoat, 4s; two shirts, 4s.; two pair of stockings, 1s.; one pair of breeches, 5s.; two handkerchiefs, 2s.; one hat, 1s.; two pair of shoes, 3s.	1	10	0
Two gowns, 5s.; one pair of stays, 2s.; two shifts, 4s.; one pair of stockings, 1s.; two petticoats, 5s; two flannel petticoats, 6s.	1	3	0
One child's apparel—a frock, 2s.; a cap, 6d.; two petticoats, 2s.; one pin-a-fore, 1s.	0	5	6
Household goods at No. 2, B. Street, L.; a flock bed, 10s.; one bolster, 2s.; two pillows, 2s.; three blankets, 5s.; two sheets, 4s.; press bedstead, 9s.; two deal tables, 7s.; six chairs, 5s.; and twenty-six pieces of earthenware, 3s.	2	7	0
£	5	5	6

* Late Residence of the said Prisoner, or Residence of the said Prisoner's family, as the case may be.

I certify that I have on the sixth day of April, 1827, been at the* residence of the said prisoner's family, at 2, B. Street, L. and have then and there seen, examined and valued each and every of the above-mentioned articles, and that the said sum of 5*l*. 5*s*. 6*d*. is a just and fair value of the same.

A. Z.
Sworn Appraiser,
Nile Street, Liverpool.

Here add a description of such property (if any) and state the representations made concerning it by the Insolvent, his family, or any other person on the premises.

I certify also that there was on the same premises, besides the said Articles, the following property *belonging to the Insolvent.*

[Here set out the Articles.]

The other household furniture in the said premises is claimed by Mrs. Weston of the same place as her own.

† This appraisement is not liable to stamp duty. See 87 s. p. 160.

In the Court for relief of insolvent debtors.

SCHEDULE.

The Schedule of Edward Fentham, otherwise Edmund West, sued by the name of Edward Fentom, formerly of High Street, Birmingham, in the county of Warwick, spirit-dealer; since of Bishopsgate Street, London, cheesemonger; and *late of C. in the county of D. maltster.**

I the said Edward Fentham do declare† that this my schedule doth contain a full and fair description of me, as to my name or names, trade or trades, profession or professions, together with my last usual place of abode, and the place or places where I have resided during the time when my debts were contracted, and also a full and true description of all debts due or growing due from me at the time of filing my petition, and of all and every person and persons to whom I am indebted, or who to my knowledge or belief claim to be my creditors, together with

* This last description must agree with the petition: if the insolvent is sued jointly with another person, add: Sued with P. S. If the insolvent has been in partnership and any of his debts are due from the partnership, and supposing such partnership had been at Bishopsgate Street, as cheesemongers, there should be inserted in the above description between "London" and "cheesemonger" "in partnership with P. S. as" adding also the final "s" to "cheesemonger." If the insolvent's *wife* also carried on business, or if the insolvent carried on two or more businesses at the same time, *he* must be described as of both or all as the case may be.

† This declaration informs the practitioner what the schedule is to contain generally: he will observe, as regards the description of the insolvent, that the schedule is to contain, a *full* and *fair* description of the insolvent, as to his name or names, trade or trades, profession or professions, together with his *last usual* place of abode, *and* the places where he resided during the time when his debts were contracted: he must be careful to insert every residence during the time aforesaid, even lodgings at an hotel, &c.

Schedule, page 1, continued.

the nature and amount of such debts and claims respectively, distinguishing such as are admitted from such as are disputed by me, and also a full true and perfect account of all my estate and effects, real and personal, in possession reversion remainder or expectancy, and also of all places of benefit or advantage held by me, whether the emoluments of the same arise from fixed salaries or from fees or otherwise, and also of all pensions or allowances which I have in possession or reversion, or which are held by any other person or persons for me or on my behalf, or of and from which I derive or may derive any manner of benefit or advantage, and also of all rights and powers of any nature and kind whatsoever, which I am, or any other person or persons in trust for me or for my use benefit or advantage are, in any manner whatsoever, seised or possessed of or interested in or entitled unto, or which I or any other person or persons in trust for me or for my benefit have any power to dispose of charge or exercise for my benefit or advantage, together with a full true and perfect account of all the debts due or growing due at the time of filing my petition to me or to any person or persons in trust for me or for my benefit or advantage, either solely or jointly with any other person or persons, and the names and places of abode of the several persons from whom such debts are due or growing due, and of the witnesses who can prove such debts so far as I can set forth the same; and that this my schedule doth also contain a balance sheet of so much of my receipts and expenditures and of the items composing the same, as is required by this honourable Court in that behalf: and doth fully and truly describe the wearing apparel bedding and other

Schedule, page 1, continued.

such necessaries of myself and my family, and my working tools and implements, which are excepted by me from the operation of the act of parliament of the 7th Geo. 4. c. 57. together with the values of such excepted articles respectively.*

Excepted articles and the values thereof.			
One coat, 10s.; one waistcoat and one flannel waistcoat, 4s.; two shirts, 4s.; two pair of stockings, 1s.; one pair of breeches, 5s.; two handkerchiefs, 2s.; one hat, 1s.; two pair of shoes, 3s.	1	10	0
Two gowns, 5s.; one pair of stays, 2s.; two shifts, 4s.; one pair of stockings, 1s.; two petticoats, 5s.; two flannel petticoats, 6s..................	1	3	0
One child's apparel—a frock, 2s.; a cap, 6d.; two petticoats, 2s.; one pin-a-fore, 1s.	0	5	6
Household goods at No. 2, B. Street, L.; a flock bed, 10s.; one bolster, 2s; two pillows, 2s.; three blankets, 5s.; two sheets, 4s.; press bedstead, 9s.; two deal tables, 7s.; six chairs, 5s.; and twenty-six pieces of earthenware, 3s.........	2	7	0
£	5	5	6

Witness my hand, the *eighth* day of *April*, one thousand eight hundred and *twenty-seven*.

†Signed in the presence of } *C. D. Attorney for the insolvent.* E. F.

* "The values of such excepted articles *respectively*."

† If the insolvent is a marksman a special attestation must be put. It will be recollected that the schedule and balance sheet, and every amendment thereto, must be read over to the prisoner by, or in the presence of, the attorney named in the retainer, before the prisoner signs the same; and that the Balance Sheet, and every side of every sheet of the Schedule and of any amendment thereof, must be signed by the prisoner; and such signature attested by the attorney, and not by any clerk, and such reading over, signatures and attestation verified by the affidavit of such attorney, to be filed with the schedule; and in case of the illness, or absence of such attorney from London, or the place where he practises, the matters aforesaid may be done by some other attorney of the Court; in which case *the cause* thereof must be stated in the attestation, and in the affidavit.

Schedule, page 2.

BALANCE SHEET of Receipts and Expenditures.

THE COURT REQUIRES*

That this account shall in no case begin later than four calendar months before the prisoner's last commitment to custody:

That, if he was before that time arrested in any suit which is still continued, it shall begin not later than the time of such arrest:

That, if before those periods, but since the commencement of his present embarrassments, any property has gone away from him by sale, assignment, mortgage, distress, execution, or any means other than the ordinary course of trade, the account shall commence so as to include all such transactions:

That the blanks in the description of the debtor side of the account shall be filled with a date early enough for compliance with the above directions:

That the specific appropriation of each sum received shall be separately shewn, where the case admits of it:

That the date of each item in the account shall be given by stating the day as well as the year, where the same can be ascertained:

* What the Court requires to be set out in the special balance sheet is so clearly stated, it is scarcely possible to mistake. In the form of balance sheet given by me, some of the insolvent's property is supposed to have been taken in execution and sold on the 1st of April, 1826, his present embarrassments having commenced previous to that period; and as the month of April, 1826, precedes the time of his arrest *in any suit which is still continued;* and is also more than *four calendar months before* the insolvent's last commitment to custody, I fill up the blanks left in the printed schedules in the description of the debtor side of the account with, "*first*" "*April*" "1826."

Schedule; page 2, continued. Balance Sheet.

That money and other property, which was in possession of the prisoner or his family or of any other person for his or their benefit at the time when he was last taken into custody, shall in all cases be made a specific item or items in the account.

Dr.

Specification of all property, real and personal, in which I have had an interest at any time since the *first* day of *April* 1826, to the time of subscribing this my schedule, shewing when, how, to whom, and for what consideration any portion of any such property has been parted with:

Date		£.	s.	d.
April 1 1826	I was in possession of certain household goods and stock in trade in my then residence in Bishopsgate-street, which were taken in execution, and sold this day by the sheriffs of London, at the suit of X. S. of, &c.—for	186	10	0
1826 May 1	I received a legacy given me by the will of A. B. late of, &c. deceased	135	0	0
1827	With part of the above legacy, as mentioned on the other (creditor) side I purchased some household goods and furniture			
Mar. 1.	On this the day of my commitment, I had in money	20	0	0
7.	Received of Mr. M. N. of, &c. a creditor..	15	0	0
		356	10	0

Cr.

Account of all such property, shewing what part thereof is now available for the benefit of my creditors, and as to such part as has been parted with, the particular application of the proceeds of the same:

Date		£.	s.	d.
April 1 1826	The sheriffs of London deducted from the said sum of £156 10s. for damages in writ directed to be levied..	155	0	0
	For poundage, fees, and expenses of sale.	9	2	6
	The balance of the said sum of £186 10s. was paid to me, and has since been expended in my business as a maltster, being	22	7	6
May	Purchased certain household goods and furniture, for	40	0	0
	The residue of the legacy mentioned on the other side was employed in my business of a maltster, being ..	95	0	0
1827 Mar. 1. to April 1	Expended in maintenance of self and family	10	0	0
Mar. 7.	Paid rent to Mr. O. P. of, &c	12	10	0
8.	Paid king's and parochial taxes	3	0	0
	Remain in hand	9	10	0
		356	10	0

Schedule, page 3. CREDITORS.

N. B. Where there are cross demands, the party must be entered both as creditor and debtor, and "set off" must be written under the amount.

No.	Names and descriptions of creditors and claimants, and their present or last residences.	Amount. £. s. d.	When contracted	Admitted or disputed.	Nature and consideration of the debt, and securities, if any; also, if the debt is disputed, the reason thereof.
*1	D. C. Henry Inglis, of Bermondsey-street, Southwark, Cornfactor........ Plaintiff's attorney, M. N. of Furnival's-inn, Holborn	50 0 0	1823	Admitted	On a bill of exchange, dated 1st of April, 1823, drawn by one Y. Z. on and accepted by me, payable to the order of the said Y. Z. 12 months after date: *for the accommodation of the said Y. Z.*
2	Henry Thompson, 117, Leadenhall-street, London, cheesefactor	50 0 0	1824	Disputed in part	This amount is claimed as a balance for cheesemongery. *I dispute £12. part thereof as being an overcharge in weight.*
3	Timothy Ayling, of Tunbridge Wells, Kent, esq. executor, of William Thompson, late of Barbican, London, hopfactor, deceased	20 0 0	1825	Admitted	For hops.
†4	Thomas Wilson, of High Street, in the City of Oxford, wine-merchant, assignee of the estate and effects of Abel West, late of St. Aldate's, Oxford, spirit-dealer, a bankrupt,	20 0 0	1823 to 1825	Admitted	For spirituous liquors had of the bankrupt.
	‡	Set off No. 2			
	Carried forward £	140 0 0			

* The detaining creditor, and if more than one, the detaining creditors, should always be placed at the head of the list of creditors; and the letters D. C. in roman characters, placed against each such creditor. The detaining creditor's attorney or his agent must also be stated, in manner here noticed.

† Where the Creditor resides in a city or large town, the name of the street or place must be stated.

‡ Notwithstanding the insolvent claims the balance as in his favour, yet the amount of the account against the insolvent must be inserted as a debt due by him, and the claim of the insolvent must be taken notice of as above, and inserted as will appear in the list of debtors.

NOTE:—Discharge relieves only to extent of debts in schedule, 4 B. & C. 419: but see 63 sec. p. 134, where error in schedule without fraud. As to sufficiency of description of creditor, see Forman v. Drew, 4 B. & C. 15.

Schedule, page 3, continued. CREDITORS.

	Brought forward	140	0	0			
5	T. L. of, &c. esq. treasurer of the trustees of the S. N. roads	50	0	0	1826	Admitted	On my joint and several bond with M. N. and T. V. indemnifying the said trustees against any loss in the collection of the tolls by the said M. N. and in which receipts he is deficient to this amount. *I have not received any consideration for this debt.*
6	George Pattinson, of Church-street, Liverpool, Lancashire, cornfactor, surviving partner of John Pattinson, deceased......	75	0	0	1826	Admitted	For barley. I accepted a bill of exchange drawn by the said John and George Pattinson for £75. dated 1st August, 1826, payable at 3 months after date to the order of the said John and George Pattinson: *the indorsee or holder of the said security is not known to me.**
7	Thomas Lenney, of Duke's Place, Houndsditch, Middlesex, gentleman....................	200	0	0	1825	Admitted	Being the supposed value of an annuity† or yearly sum of £30 granted to the said T. Lenny for the lives of X. S and X. L.; secured by the joint bond of myself and of M. Y. and N. O. (my sureties) dated in or about March, 1825, which said annuity was granted in consideration of £250.
	Carried forward £	465	0	0			

* See 46 section, page 121. Where prisoner is to be adjudged discharged "as to the claims of all other persons, *not known* to such prisoner at the time of such adjudication, who may be *indorsees or holders* of any negotiable security *set forth* in such schedule so sworn to as aforesaid."

† 51 Section 7 G. 4. page 124, extends the discharge of prisoner "*so adjudicated* as aforesaid" to any sum payable by way of annuity or otherwise, *at any future time:* creditor admissible as a creditor for the *value* of the annuity which value the Court is to ascertain, regard being had to the original price, &c.:—AS TO INSOLVENT'S LIABILITY TO HIS SURETIES, Sec 2 M. and S. 550. Where it was held that a person discharged under 51 G. 3. c. 125, (a temporary act) was *liable to his surety*, for the arrears of an annuity *due since* his discharge, which the surety had been obliged to pay: also see 46 section 7 G. 4. page 120, as to what debts, sums, and persons, *adjudication* extends: and see 61 s. 7 G. 4, page 133, as to plea to action brought against discharged insolvent.

Schedule, page 3, continued. CREDITORS.

	Brought forward	465	0	0			
7	James Best, of Great-surrey-street, C.C.Surrey, ironmonger, and Thomas Wells, of the same place, gentleman, overseers of the poor of the parish of C. C. Surrey.	10	0	0	1826 and 1827	Admitted	Being arrears due on a bond in the penal sum of £100. dated 1st April, 1826, given by me and M. Y. and N. O. (my sureties) to indemnify* the parish of C. C. Surrey, against charges and expenses which may be imposed on the parish for the maintenance, clothing, education, or bringing up of a bastard child of a B. G. of which I am the reputed father.
	£	475	0	0			

* 3 Bing. 154. Obligors in a bastardy bond, discharged under 1 G. 4. c. 119. subsequent to a judgment on the bond, were held liable to expenses incurred in respect of the bastard, subsequently to their discharge. This was a *scire facias*, on a judgment, suggesting breaches *subsequent to the insolvents' discharge*. The decision seems to have been given chiefly on the concluding proviso of the 28 s. 1 G. 4: I do not find a similar proviso in the present act; but see 1 B. and A. 491, where it was held that a debt on a bond of this nature, was upon a contingency, and in its nature wholly incapable of valuation: also see, 51 s. 7 G. 4. "regard being had to the original price," &c.

NOTE. It is not necessary to state one creditor's name more than once, should he chance to be a creditor as indorsee of a bill or note, or otherwise, as well as for goods, but quite sufficient to add the whole debts due to him together, show the total, and state the respective nature of the debts making such total. Should the creditor however happen to be a creditor in more characters than one, the respective characters should appear, and the debts due in each character be put opposite his description in that character, whether as executor, administrator, assignee, surviving partner, or otherwise, as the service of the order of Court should be on the party who can legally sue: therefore in cases of corporate bodies, the treasurer, clerk, or other person authorised to sue, should be inserted by name, with his proper description, and the stile of the corporate body to whom the debt is owing.

If the insolvent has been in partnership, and has any partnership debts owing by or to him as such partner, he must set them out in his schedule, distinguishing between his partnership transactions and his separate debts and concerns, which may be done by classing his creditors under separate heads—thus: "the following to the amount of £800. are debts due by me and P. S. my late partner."—"The

Schedule, page 5. DEBTORS.

N. B. Where there are cross demands, the party must be entered both as creditor and debtor and "set-off" must be written under the amount.

No.	Names, descriptions, and places of abode of debtors.	Amount. £.	s.	d.	When contracted.	Good, Bad, or Doubtful	Nature and consideration of the debt; also securities, if any, for the same.	Witnesses with their residences and other evidence, by which the debt may be proved.
1	U. C. of, &c. victualler	25	0	0	1824	Doubtful	For spirituous liquors.	My books and S. T. of, &c. porter
2	Thomas Wilson of High Street, in the city of Oxford, winemerchant, assignee of the estate and effects of Abel West, late of St. Aldate's, Oxford, spirit dealer, a bankrupt	24	0	0	1824 and 1825	Good	For cheesemongery goods.	* My books and the said S. T. of, &c. porter.
		Set	off	No. 4.				
3	R. R. late of, &c. present residence unknown.....	80	0	0	1826	Bad	For malt.	My books and A. F. of, &c. laborer.
		129	0	0				

following debts to the amount of £400. are due by me separately." The debts due to the insolvent jointly and separately should be similarly distinguished.

If the insolvent's partner is also in custody, and intends taking the benefit of the insolvent act, yet each must apply separately, and file a distinct schedule, each noticing as above, the partnership debts.

* Although the witness is the same person as mentioned above, yet it will not be allowed to write, "The same" or "Ditto," nor will "Ditto" be allowed in the preceding part of the schedule instead of "admitted," or "disputed." *Abbreviations must be avoided*: not even the common abbreviations of names of counties, such as Beds, Bucks, Notts, &c. will be allowed.

Schedule, page 6. PROPERTY IN POSSESSION.

N. B. If property has been taken possession of by the provisional assignee, it must nevertheless be fully entered in the Schedule.

	Real and personal estates and effects, which were in my possession, enjoyment or control, or which were held by any other person or persons in trust for my use, or to the possession or enjoyment of which I was entitled at the time of subscribing my petition, and which are not excepted from the operation of the act.	Supposed value.		
		£	s.	d.
1. Interests in land.	*Freehold, copyhold, and leasehold property, with local description, names of tenants, and annual rent of the same: and statement of incumbrances (if any) thereupon, with the dates thereof.* *None.**			
2. Personal property.	*Household goods and furniture at my late residence at B. St. L.*	30		
	Wearing apparel *Jewels trinkets and ornaments of the person* *Plate linen and china* *Wines and other liquors* *Books prints and pictures* *Horses cows and other animals* *Carriages* *Farming Stock and Implements of husbandry* *Stock in Trade in my business of* *Machinery and utensils in my business of* *Ships and shares of ships, viz.* — *None, over and above the excepted articles.*			
	Cash, bills, promissory notes, bonds, and other personal property not before specified. *None.*			
3. Property in the funds, annuities, shares, &c.	*Annuities, money in the public or other funds, shares in canal and other companies; shewing in whose names the same are standing, also when and by whom the last dividend or other payment was received in respect of the same.* *None.*			
4. Unpaid legacies.	*Legacies due, but unpaid; with all particulars concerning the same.* *None.*			
Books, deeds, papers, &c.	The following is a true list of all books, papers, deeds and writings, relating to my estate and effects, or any part thereof, which at the time of my first arrest abovementioned were, or at any time since have been in my possession, or under my custody or control, or in the possession or custody of any person in trust for me, or for my use, benefit, or advantage. *One cash-book, one day-book, and one ledger.*			

* This word must be written under each head, if the insolvent has not any thing to return under such head.

Schedule, page 7. PROPERTY IN REVERSION, &c.—*Places—Pensions—Rights and Powers.*

N. B. Contingent as well as vested interests must be entered.

	Real and personal estates and effects, in which I have any interest in reversion, remainder, or expectancy.	Supposed value of my interest if now to be sold £.	s.	d.
1. Interest in land.	*Freehold, copyhold, and leasehold property, with names and descriptions of persons now enjoying the same, and the annual value thereof; also the nature of my interest therein and from whom and in what manner it is derived.* *None.*			
2. Personal property.	*Personal property, with names and descriptions of persons now enjoying the same; also the nature of my interest therein, and from whom and in what manner it is derived.* *None.*			
3. Property in the funds, annuities, shares, &c.	*Annuities, money in the public or other funds, shares in canal and other companies; shewing in whose names the same are standing, with names and descriptions of persons now enjoying the same; also the nature of my interest therein, and from whom and in what manner it is derived.* *None.*			
Places and pensions in possession or reversion.	Places of benefit or advantage held by me, with the salaries, fees, and emoluments thereof: also all pensions and allowances, in possession or reversion, held by me or by any other person or persons for me or on my behalf, or of and from which I derive or may derive any benefit or advantage. *None.*			
Rights and powers.	Rights and powers, which I or any other person or persons in trust for me, or for my use, benefit or advantage, am or are in any manner seised or possessed of or interested in or entitled unto, or which I or any other person or persons in trust for me, or for my benefit, have any power to dispose of, charge, or exercise for my benefit or advantage. *None.* **E. FENTHAM.*			

I *Edward Fentham* do hereby swear that the contents of my petition filed in this honorable court, and also of this my schedule, and of all and every part thereof respectively, are true :—So help me God.

Sworn in Court, at

* The schedule must be signed by the insolvent "on every side of every sheet," and this direction must be observed even on those sides where there is not any thing written: the attorney only signs his name, as attesting witness, on the first side.

In the Court for relief of insolvent debtors.

In the matter of the petition of *Edward Fentham*, a prisoner confined for debt in the gaol of L. in the county of L.

*C. D. of, &c. one of the attorneys of this honorable Court maketh oath and saith, that he is retained by the said insolvent to act for him as his attorney in this honorable Court: and this deponent saith he was present on the *eighth* day of *April instant* and did see *Edward Fentham* the said insolvent, sign his name on every side of every sheet of his schedule and balance sheet to be filed in this honorable Court, and duplicates thereof; and that before the said schedules and balance sheets where so signed by the said insolvent the same were read over to him *by this deponent* [*or in this deponent's presence*]: and this deponent further saith that the name C. D. signed on the first side of the said schedule and balance sheet and duplicates thereof, as the witness attesting the said several signatures by the said insolvent, is of the proper hand-writing of this deponent.

Sworn, at &c. C. D.

M. N.

A commissioner for taking affidavits in the Court of *King's Bench* at Westminster.†

* When another attorney witnesses the schedule and balance sheet for the insolvent's attorney, the deponent must alter the commencement of the affidavit, and state that he attended the insolvent for C. D. the said insolvent's attorney, who was unable to attend at the gaol by reason of indisposition, or as the case may be.

† See 83rd section, page 158 as to whom affidavits are to be sworn before. The practitioner will in all cases be careful that the commissioner mentions of what court he is a commissioner.

One affidavit is sufficient in country as well as town cases.

In the Court for relief of insolvent debtors.

In the matter of the petition of *Edward Fentham,* a prisoner in *the gaol of L. in the county of L.*

General Balance Sheet.

This my account begins in or about the month of *April,* 1823:—*

The earliest debt in my schedule (No. 1,) was contracted by me in the year 1823:—

DATES.	CR.		£.	s.	d.	DATES.	DR.		£.	s.	d.
1823 April 1	Capital at the time aforesaid, consisting of *household goods and stock in trade*......		300	0	0		Good debts, as in schedule	24			
							Bad	80			
							Doubtful	25			
	Aggregate amount of debts as in schedule.	175					Amount of debts owing to me		129	0	0
	Deduct 1. Those for which I have received no consideration	122				1823	Rent for 1 year at 40*l.* a year............		40	0	0
						1824 1825	*Rent for 2 years at 50l. a year*		100	0	0
						1826	*Rent for 1 year at 35l a year*		35	0	0
	2. In respect of debts more than once entered					1823	Taxes for 1 year at 20*l.*		20	0	0
						1824 1825	*Taxes for 2 years at 25l.*		50	0	0
						1826	*Taxes for 1 year at 15l.*		15	0	0
	Amount of debts contracted since the time aforesaid, for which I have received consideration: ..		353	0	0		Servant's wages for 4 years at 20*l.*		80	0	0
							Other household expenses, for 4 years at 150*l.*..............		600	0	0
	Carried forward		653	0	0		Carried forward		1069	0	0

* This account is to begin at or before the time when the earliest debt in the schedule was contracted by the insolvent: but if he has at any time been bankrupt, or discharged under an insolvent act, the account of receipts and expenditures subsequent to such bankruptcy or insolvency must be given separately from prior accounts; therefore, when such prior account shall be also necessary, it may be expedient to file two general balance sheets; the one intitled, "general balance sheet prior to my bankruptcy (or insolvency) in 18 :" the other, "general balance sheet subsequent to my bankruptcy (or insolvency) in 18 :"—but where there may only be one or two items belonging to the credit side, of a date prior to the period prescribed for the commencement of the account, either the same may be entered in

DATE	CR.	£.	s.	d.
	Brought forward £	653	0	0
	Profits of business in each year: viz.*			
	In 1823	200	0	0
	1824	200	0	0
	1825...............	150	0	0
	1826	120	0	0
	[Here enter all monies received by annuities, dividends, or otherwise also all property had by purchase, gift, devise, bequest, &c since the time aforesaid:]			
1826 May 1	*Received alegacy given me by the will of A. B. late of, &c. deceased..*	135	0	0
	VALUE to be accounted for .... £	1458	0	0

DATE	CR.	£.	s.	d.
	Brought forward £	1069	0	0
	Special expenses, disbursements, and losses, viz.			
1826 April 1	*To amount of levy under writ of execution, mentioned in special balance sheet, and expenses ....*	164	2	6
	To estimated loss on sale of goods and stock under said execution	113	10	0
May	*Paid repairs of malthouse*	25	0	0
	Travelling expenses this year	20	0	0
	Medical aid	10	0	0
	Property mentioned in schedule, p. 6...	30	0	0
	Money in possession when I was taken into custody;.......	9	10	0
	Excepted articles, as by valuation;......	5	5	6
	Difference between valuation and cost price	9	14	6
	DEFICIENCY	1	17	6
	£	1458	0	0

Cause of my insolvency.

Loss by the execution above mentioned and bad and doubtful debts.

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†Signed in the presence of C. D. *attorney for the insolvent.* } Dated this *eighth* day of *April*, 1827. E. F.

statement only, without bringing the value into the *£. s. d.*; or, if brought in, the account may be kept right, by also specially entering the same on the debit side.

See also the Rule of Court concerning balance sheets, No. 10. p. 169.

* It will be noticed that *each* year's profits are to be stated.

† See note † on attestation to schedule, p. 198.

The preceding balance sheet is that of an ordinary tradesman. If the insolvent's dealings and the circumstances of his case are complex, it will then become necessary to state each year's receipts and each year's expenditure, &c. separately, in the following manner:

	Dr.	£.	s.	d.		Cr.	£.	s.	d.
1822	By profits of business	300	0	0	1822	Rent	60	0	0
	By sale of plate	35	0	0		Taxes	25	0	0
	By a legacy, under the will of A.B. late of, &c. deceased	100	0	0		Servant's wages	20	0	0
						Other household expences	200	0	0
						Wearing apparel	30	0	0
						Loss by sale of plate	15	0	0
						Travelling expences	15	0	0
1823	By profits of business	500	0	0	1823	Rent	100	0	0
	By sale of horse and cart	30	0	0		Taxes	50	0	0
	By sale of lease of premises, No. 1, St. Martin's Le Grand, & fixtures therein	147	0	0		Servants' wages	50	0	0
						Other household expences	300	0	0
						Wearing apparel	50	0	0
						Loss by sale of horse and cart	30	0	0
						Medical aid	20	0	0
						Premium on policy of insurance	27	10	0
						Law expences	40	0	0

It is hoped what is above stated will give the reader a tolerable idea of the nature of the required "general balance sheet;" such balance sheet is to shew on the one side the profits and other income of the insolvent *in each year*, and on the other side the expenditure and losses *in each year*, so clear and distinct as to be intelligible to an ordinary capacity, the whole sheet shewing the loss, and accounting for the insolvency.

In town cases, only one schedule* and balance sheet are necessary.

* Many complaints have been made and insolvents frequently damnified through bad or imperfect writing of names of persons and places, the whole of the schedules, the names of persons and places in particular should be neat and plain.

It is also advisable previous to the insolvent signing his schedule that the whole of the sheets be sewn together: many serious mistakes might thus have been prevented, such as substituting the inside sheet intended for the original schedule for the one intended for the

In country cases two schedules and two balance sheets, are required.

The schedules of insolvents where petitions are to be heard *before the Court*, are filed in the TOWN department at the office of the Court.

Affidavit of service to be filed ten days before hearing.

The affidavit of service of notices must, in town cases, be lodged in the office of the Court, ten days at least before the day of hearing.

The schedules of insolvents whose petitions are to be heard *before the justices* in sessions, in Wales, or before the *commissioners on the circuits* in England, are filed in the COUNTRY department at the office of the Court, and orders for hearing are granted, provided there is sufficient time between the next general quarter or adjourned sessions of the peace if in Wales, or the days appointed for hearing before the commissioners if in England, according to the following rule of Court, viz. That every order for hearing by a commissioner on circuit, (the circuit appointments having been gazetted) also every order for hearing by justices of the peace, shall be ready for delivery at the opening of the office on the second day (exclusive of *Sunday*) after the filing of the schedule; but that the same shall not be issued before that time: and that in every such case the duplicate of the petition and schedule shall be given out with the order for hearing, and the warrant of attorney shall be prepared and ready to be given out on the seventh day after the issuing of such order:—provided, that no order for hearing by a commissioner on circuit *shall be issued later than the twenty-eighth day before the day notified in the Gazette for the attendance of the com-

Regulation as to time of filing schedules in country cases prior to day of hearing.

certified copy, which in cases where the schedules were not copied side for side has caused inaccuracy and confusion; in several instances the inside sheets have been wholly lost.

missioner; and that no order for hearing by justices of the peace shall be issued later than the twenty-eighth day before the day to be appointed for such hearing.

On an attentive perusal of this rule of Court, it will be seen the petitions and schedules must in all cases be filed thirty days *at the least before* the day of hearing, and commonly thirty-one days before such day.* If it becomes necessary to make any special application for leave to file petitions or schedules, much will depend on the sitting of the Court, which frequently adjourns when the number of applications from the town gaols are few, from the Tuesday in one week to the Friday in the following week, being an adjournment over nine clear days; it may therefore *frequently* happen, that the affidavit to make the special application in due time, ought to arrive in town *thirty-nine* or *forty* days before the day of hearing.

By section 5, page 82, the Court is empowered, after the expiration of six weeks from the last day of Trinity Term until the first day of November in each year, to adjourn for six weeks; the country practitioner will therefore perceive, that if any special application is necessary to be made to file a petition

* Suppose the day of hearing to be March	31st.
The day for delivering out the orders will be before that day, days	28
Which will be March	3
The schedule to be filed before, days..............................	2
The schedule will therefore be to be filed March..............	1

But if the 3rd. of March happens on a Sunday, a Monday, or a Tuesday, then it will be seen that to allow the schedule to remain in the office one day, *exclusive of Sunday*, the same must be filed *before* the 1st. of March.

or schedule, at this period of the year, and it is not made before the adjournment, six weeks must elapse ere it can be made; care must therefore be taken to send up the petitions, &c. in good time to enable the agents to file them within the fourteen days limited by the act, and they must be sent up correct in every particular, otherwise they will be rejected, and the fourteen days may elapse. The following summary will give at one view, the documents necessary to be sent to London; it may not be amiss to refer thereto at all times when sending papers from the country; errors and delays may thereby frequently be avoided.

Petitions, and documents to be filed therewith, in country cases.

ONE RETAINER, signed by the insolvent.

TWO PETITIONS ON PARCHMENT, signed by the insolvent and properly attested. If the insolvent is a marksman, the petitions must be specially attested; the petitions must bear even date with the assignment.

ONE ASSIGNMENT—No erasures, alterations, or interlineations are allowed in this document, and particularly in the date thereof: *It must bear even date with the petitions.* If the insolvent is a marksman, it must have a special attestation; the witness will put his address.

ONE COPY OF CAUSE, with the gaoler's certificate of the day of commitment. The copy of cause to be signed by the gaoler, and the day of commitment not to be on an erasure.

TWO ESTATE PAPERS—these must be signed by the insolvent, and be dated. If the insolvent is a marksman, they must be specially attested.

Schedules, and documents to be filed therewith, in country cases.

TWO SCHEDULES ON PARCHMENT, to be signed on *every side* of every sheet thereof, even on a blank side; —not to bear date *before* the petitions.—They must be attested *by the attorney* of the insolvent or in his absence, by another attorney of the Court; such absence

to be stated in the attestation, *and the cause thereof.* If the insolvent is a marksman the schedules are to be specially attested.

ONE VALUATION of the excepted articles to be signed by a sworn appraiser, each article to have its separate value attached.

TWO BALANCE SHEETS, to be signed by the insolvent, and attested by his attorney. If another attorney attests, the above remark as to cause of absence of the insolvent's attorney applies also here.

ONE AFFIDAVIT *of seeing the schedules signed.* The commissioner must not omit stating of what Court he is a commissioner.

If a special application is to be made for leave to file petitions, one of the estate papers must be annexed to the affidavit, and verified thereby.

Before orders for hearing at sessions in Wales can be obtained, either for the general quarter sessions, or an adjournment thereof, a certificate from the clerk of the peace must be in the office of the Court.

See 14th Rule of Court, p. 170, as to delivering out orders for hearing in country cases.

Services of order of Court, on whom.*

All detaining creditors must be *personally* served with orders for hearing, even if the debt is only 10*s.*; where the detaining creditor sues by attorney, the attorney is to be served: all creditors whose debts amount to 100*l.* and upwards, resident in *England*, must be served personally, in whatever part of the kingdom they may reside; all creditors whose debts amount to 5*l.* and upwards, and detaining creditors, residing or carrying on business in London, or within ten miles thereof, must be personally served *by the messengers*† *of the Court;* and all creditors, residing

* See 15th Rule of Court, p. 171.

† Messengers' Office is No. 6, Lyon's Inn. See Regulations respecting messengers, pp. 179, 180, 181.

or carrying on business upwards of ten miles from London, whose debts amount to 5*l.* and not to 100*l.* may be served by copy of the orders being put into the General Post Office, properly directed to the creditors; and all creditors above 5*l.* resident in *Scotland* or *Ireland*, may be served by post-office service as above, or, by personal service.

The orders for hearing, which are required to be served personally, may be served on the wife, clerk, or servant, at the usual place of abode or business of such party, or, where the party is assignee of a bankrupt, on the solicitor of such assignee, or his clerk or servant, at the usual place of business of such solicitor; such service must be twenty-one days before the day of hearing, one day inclusive, the other exclusive; that is, the service on the 1st for the 22nd. Where the service is by the General Post, the order must be put in the Post Office twenty-five days before the day of hearing.

If creditor cannot be found.

If a creditor cannot be found, and it happens that he has commenced an action against the insolvent, his attorney may be served, showing by affidavit, that the creditor could not be found. If, however, there is no attorney on whom service can be made, the messenger or other person, having made enquiry after the creditor according to the address, should state, not merely that he could not be found, but that the deponent had made enquiry at the place so described, and that he had gone away, and after diligent enquiry the deponent could not learn where; or, if not known at the place so described, that fact should appear, and that he could not be found in the neighbourhood of such place.

Where creditors omitted in schedule.

It frequently happens that insolvents, after their schedules are filed, recollect creditors, or are informed

of claims of persons, whose names are not inserted in the schedules, and where the insolvent's attorneys in such cases have given the regular notices to such creditors, the Court, on the day of hearing, generally allows the schedules to be amended by inserting the names, &c. of such creditors who have been so duly served, provided such creditors are not numerous, and the sums not so great as materially to affect the surplus or deficiency appearing in the balance sheets. It is however recommended, when the sittings of the Court and other circumstances will allow, that application to the Court be made to amend the schedules and balance sheets before any of the services take place, otherwise creditors on the schedules may have good grounds to complain that by reason of such omission they have been prevented making such full enquiries as they were desirous of making of each creditor. A slight suspicion has induced the Court to remand an insolvent to amend.

Advertisement of hearing.

Where the prisoner is described as having resided in *Scotland* or *Ireland;* also where four or more of the creditors reside in Scotland or Ireland, twenty-one days' notice to be given in the *Edinburgh* or *Dublin* Gazette.

In cases on the circuit or before the justices, twenty-one days' notice by advertisement in a country newspaper *most usually circulated* in the county or place where insolvent is to be heard.

In cases to be heard in town, if the *last usual* residence of insolvent was other than in London, Middlesex, or Surrey, then twenty-one days' notice by advertisement in some newspaper most usually circulated in the neighbourhood of such last usual residence.

In the Court for relief of insolvent debtors.

In the matter of the petition, &c.

A. B. clerk to C. D. of E. in the county of G., attorney at law, maketh oath and saith, that he did on Tuesday, the 1st day of May instant, serve G. H., the attorney or agent of H. J., the detaining creditor of the said insolvent, [or T. V., a creditor of the said insolvent] with a true copy of the order of Court hereunto annexed, by delivering the same to the said G. H., personally at his office in E. aforesaid, [or by delivering the same to the man-servant of the said T. V., at the dwelling house of the said T. V., at E. aforesaid.] And this deponent further saith, that he did on the 2nd day of May instant serve the several persons hereafter named, creditors of the said insolvent, each with a true copy of the said order of Court hereunto annexed, in manner following, that is to say, 6. John Thomasin, (called in the schedule of the said insolvent John Thompson) personally at his house at 8. E. aforesaid; the wife of Edward Wills, Miller, at the house of the said Edward Wills at West B. in the said county of G. (described in the said schedule as 10. of E. aforesaid Miller); K. L., &c.

Affidavit of service of notices.

1.

A. B.

Sworn at, &c. before me

M. N. a commissioner for taking affidavits in the court of King's Bench, at Westminster.

The order of the Court annexed to the above affidavit must be marked as an exhibit by the commissioner taking the affidavit.

In the Court for Relief of Insolvent Debtors.

In the matter of the petition of E. F., a prisoner confined for debt in the gaol of L., in the county of L.

Affidavit of sending orders of Court by the post.

H. W. clerk to J. N. of, &c., gentleman, one of the attorneys of this honourable Court, maketh oath and saith, that he did on the 1st day of May, instant, put into the letter-box, at No. 44, Great Surrey-street, Blackfriar's Road, Surrey, a receiving house for general post letters, true copies of the order of Court hereunto annexed, directed to the following persons, 2 that is to say, to Mr. A. B., Warrington, Lancashire, 7 farmer, to Mr. C. D., Bolton-le-Moor's, Lancashire, 9 tailor; and to Mr. E. F., Warrington, Lancashire, jobber; and this deponent saith, that the name and address of the said J. N was printed to each copy of the said order respectively.

H. W.

Sworn at the Insolvent Debtors' Court Office, No. 33, Lincoln's Inn Fields, Middlesex, this 3rd day of May, 1827, before me

H. C. Richards, a commissioner.

Creditor's consent.

Should a creditor not be served in due time, and a consent can be obtained, the following are the forms of consent, and affidavit verifying the signature.

In the Court for Relief of Insolvent Debtors.

In the matter of the petition, &c.

I hereby consent to the petition of the above insolvent being heard, notwithstanding any defect in the service of the order of the Court on me, provided it

does not affect my claim on the insolvent's estate, or my right to oppose his discharge. Dated this 20th day of May, 1827.

X. Y. Warrington, Lancashire.

Witness, A. B.

In the Court for Relief of Insolvent Debtors.

In the matter of the petition, &c.

A. B., of, &c. gentleman, maketh oath and saith, that he was present on the 20th day of May, instant, and did see X. Y. of Warrington, Lancashire, farmer, sign the consent hereunto annexed, and that the name A. B., subscribed as a witness thereto, is of the proper hand-writing of him, this deponent.

Affidavit of seeing consent signed.*

A. B.

Sworn at, &c. before me
M. N., a commissioner for taking affidavits in the court of King's Bench at Westminster.

Sworn at, &c., the 2nd day of May, 1827, the above having been first read over to the deponent, who seemed perfectly to understand the same, and made his mark thereto in my presence.

Jurat to affidavit of a marksman.

The above assignment was read over and explained to the said E, F., who seemed to understand the same, and made his mark thereto, and sealed and delivered the same in the presence of

Attestation to the assignment of a marksman.

This schedule was read over and explained to the said E. F., who seemed to understand the same, and made his mark thereto, in my presence.

Attestation to the schedule of a marksman.

* This affidavit should be made by a messenger of the Court, where the creditor resides in London, or within the bills of mortality; and in other cases it should be by an attorney.

Attestation to the petition of a marksman.

The above petition was read over and explained to the said E. F., who seemed to understand the same, and made his mark thereto, this 2nd day of May, 1827, in my presence.

Form of title of affidavits.

All affidavits in this Court, must be entitled as follows:

In the Court for Relief of Insolvent Debtors.

In the matter of the petition of John Doe, (sued by the name of John Dore,) a prisoner confined [or lately confined] for debt in the gaol of Maidstone, in the county of Kent.

A. B. of, &c. maketh oath, &c.

Before whom affidavits to be sworn.

By the 83 sec. 7 G. 4. page 158, all affidavits to be used before the Court, &c., are to be sworn before the Court, or any commissioner thereof, or any commissioner appointed by the said Court for the purpose of taking affidavits, or any master extraordinary in chancery, or commissioner for taking affidavits in any of the superior Courts of *Westminster*, or in *Scotland* or *Ireland* before a magistrate of the county, city, town, or place, where any such affidavit shall be sworn.

The commissioner, if not appointed by this Court, must not omit stating of what court he is a commissioner, as the ordinary conclusion "a commissioner, &c." will not suffice.

Filing books, papers, &c. Town.

In town cases, the books, papers, &c. are filed at the office of the Court at the time of filing the schedule, 40 s. 7 G. 4. p. 115.

Country.

In country cases the schedule, books, papers, &c. are lodged with the clerk of the peace, within ten days after the date of the order for hearing, 77 s. 7

G. 4. p. 152; each book and bundle of papers should be endorsed in strong bold writing, with the number of the schedule, the name of the insolvent, the prison, the title or description of the book, the number of the books and bundles of papers, and the name of the attorney, as follows:

16,000.

Edward Fentham,

Lancaster,

[here describe the book, as *Ledger*]

Books, &c. four,

Charles Dean,

Attorney.

Whenever the insolvent's goods or effects have been taken in distress, execution, or otherwise parted with subsequent to his arrest in any action on which he is still a prisoner, he should file with, and annex to, his schedule the original inventory, catalogue or other, the best account of such goods, &c. in his power to furnish, and be prepared on the hearing to prove that such distress, execution, &c. was the adverse act of the landlord, plaintiff, or other person, and it may therefore frequently be proper to subpœna the landlord, broker or other person taking such goods, to satisfy the Court or commissioner.

Where insolvent's goods, &c. sold under distress, &c.

Where insolvent apparently interested in property.

It commonly happens that wives or children of insolvents, have certain interests under wills, settlements, &c. and creditors assume the insolvents have also interests therein; it is in all such cases advisable for the insolvents to be prepared at the hearing with authenticated copies of the wills, and in cases of deeds, with the instruments themselves, and, where practicable, evidence to prove the validity of the instrument; the insolvent should also be provided with copies of such instruments, the copies being generally required by the Court or commissioner to be filed, for the information of the assignee. And where insolvent is a mere naked trustee of property it is yet advisable to be prepared with evidence to satisfy the Court or commissioner that the insolvent has no beneficial interest in the property.

AMENDMENT of schedule.

Wherever an amendment of the schedule is ordered by the Court or commissioner or justices, such amendment, if made at the time, will be in such way as the Court, commissioner or justices may then direct, but if the amendment is not made at that time, the amendment will be by annexing additional sheets of parchment to the schedule, and in no case, unless by special order of the Court, by substituting an entirely new schedule.

Where the case is adjourned to file an amendment in the Court, the amended sheet, will be entitled,

Amendment to Schedule of Edward Fentham, No. 16,000.

The amendment is to be read over to, and signed by the insolvent, in the presence of his attorney, and witnessed, and an affidavit of seeing the same signed, annexed.

In country cases, a duplicate of the amended sheet will be necessary; when new creditors are added, such

creditors are to be duly served as in an original case, and advertisements inserted, unless waived by the order of the Court or the commissioner.

Remands by commissioner on circuit.

When the commissioner remands an insolvent to a subsequent circuit, the insolvent's attorney should forthwith instruct his agent to obtain an official extract from the calendar, and without delay proceed to carry into effect the direction of the commissioner. Should the remand have arisen from defective service, see Rule of Court XV. 8. and extract of commissioner's order from the calendar.

Where insolvent removed to country gaol under 65 section.

After an insolvent has been removed to a country gaol, from one of the gaols in London, Middlesex or Surrey, ten days notice of the hearing must be given in the London Gazette; and where on an original hearing, notice in any newspaper in *England* would be required, then also seven days' notice of the hearing in such newspaper, and service of the order for hearing seven days before the day of hearing on all detaining creditors, and all creditors who entered notice of opposition for the former hearing; unless in any case the Court shall otherwise direct by special order. See 7 division, 15 Rule of Court, p. 172.

As to notice of opposition in this case, see Rule of Court XVII. 3. p. 176.

On a certificate of the attorney for the insolvent that the insolvent is actually removed, the whole proceedings are transferred from the town to the country department, the proper officer, first noting on the schedule that the services are perfect, or the defects, if any, the names of the creditors who entered opposition, and of those who appeared to oppose; the books and papers are delivered to the attorney on his giving a receipt for the same, and when the proceedings have been so transferred, the insolvent is to take an office copy of his

petition, schedule and balance sheet, to be deposited at the country office by way of duplicate, the order for hearing issues, and the original petition, schedule and all proceedings together with the affidavits of service, are delivered to the attorney for the purpose of lodging the same with the clerk of the peace.

Failure of removal after order obtained.

In case the creditor who obtains the order to remove the insolvent, shall fail so to do, within the time limited by the Court: the insolvent on affidavit of such fact, may obtain an order to be heard before the Court; he will then observe the directions as to notice of such hearing mentioned in Rule of Court XV. 7. p. 172. As to notice of opposition, see Rule of Court XVII. 3. p. 176.

Provisional assignee's authority to sell property, COUNTRY.

The 21st Rule of Court, p. 177, directs the provisional assignee, to sell all goods, chattels, and personal estate; and out of the proceeds to defray the costs and expences of taking possession and selling the same as shall be allowed by the Court, and account for the produce to the Court.

The 22nd Rule of Court, p. 177, directs that in every case to be heard by a commissioner on the circuit, in which there shall have been any property in the possession or under the control of the prisoner to be given up to the provisional assignee, there shall be obtained and produced at the hearing a certificate from the provisional assignee, that such property has been duly given up or accounted for.

To effect such sale, the provisional assignee is applied to by the agent for a blank printed authority, which the agent fills up, to C. D. gentleman, the insolvent's attorney, to sell the property, and account; the provisional assignee makes an entry thereof, and signs same, which authority is in the following form:

No. 16000.

Court for Relief of Insolvent Debtors.

In the matter of the petition of *Edward Fentham*, late of *C. in the county of D.* an insolvent debtor confined the gaol of *L. in the county of L.*

I hereby authorise Mr. *C. D.* one of the attorneys of this honourable Court, to take possession of all the personal estate and effects belonging to the said insolvent which were assigned to me by *him* on the *first* day of *April last* (pursuant to the directions of the act of parliament passed in the seventh year of the reign of his present majesty, for the relief of insolvent debtors in England,) on the occasion of *his* presenting *his* petition to this Court.

And I further authorise the said *C. D.* with all convenient despatch to make sale and dispose of such personal estate and effects, accounting to me duly for the proceeds thereof.

Dated this *tenth* day of *April*, 1827.
Witness *J. N.*

Henry Dance,
Provisional assignee of insolvent
debtors in England.

The attorney who is so authorised proceeds to sell the property, either by public auction or private contract as seems to himself and the auctioneer the best course under the situation of the property, and circumstances. It is generally advisable to sell by public auction.

After the sale, the auctioneer marks the catalogue* with the prices against each article and delivers to the attorney, his employer, a stated account as follows:

* The sale is not liable to auction duty. See 87 s. 7 G. 4. p. 160.

In the matter of Edward Fentham.

X. X. in account with C. D.

Dr.						Cr.		
1827.				1827.				
April. By amount of sale	30	0	0	April. To paid catalogues and posting bills		1	0	0
				To paid bill-sticker and porters		1	0	0
				To commission ...		1	10	0
				Room & expenses.		0	4	0
				To balance		26	6	0
	£30	0	0			£30	0	0

X. X.

The account referred to in the affidavit of X. X.

A. Z. commissioner.

The auctioneer is to make the following affidavit.

In the Court for Relief of Insolvent Debtors.

In the matter, &c.

X. X. of, &c. auctioneer, maketh oath and saith, that he put up to sale the several goods and chattels mentioned in the catalogue hereto annexed, and that the same produced the respective prices marked against the same, which were the best prices and most money this deponent could obtain for the same respectively; and this deponent saith, the stated account, signed by this deponent and hereto annexed, contains a just and true account of monies necessarily expended by this deponent as therein set forth.

Sworn, &c.

The attorney makes out his stated account and bill of costs.

In the matter of Edward Fentham.

C. D. in account with Henry Dance, esq.

DR.		CR.	
1827.		1827.	
April. By cash of X. X. the balance of sale	26 6 0	April. To paid king's taxes	2 10 0
		To paid banker's commission, on remitting money	0 1 11
		To balance......	23 14 1
	26 6 0		£26 6 0
The account referred to in the affidavit of C. D. A. Z.		C. D.	

The attorney annexes to the above account, the bill of costs and the following affidavit.

In the Court for Relief of Insolvent Debtors.

In the Matter of Edward Fentham, &c.

C. D. of, &c. attorney for the insolvent, maketh oath and saith, that the several goods and chattels delivered by this deponent into the possession of X. X. of, &c. auctioneer, to sell, were the whole of the goods and chattels in the possession or under the controul of the insolvent (over and above his excepted articles) to the best of this deponent's knowledge and belief [or as the fact is] and that the payments mentioned in the stated account hereunto annexed were necessarily paid by this deponent. And this deponent further saith, he attended the sale* of the said property by the said X. X. at S. in the said county, being eight miles from this deponent's residence, and was necessarily absent on that occasion two days; that he expended the sum of two pounds in horse hire and other necessary ex-

* If any other person attends, the affidavit must be accordingly varied. Should circumstances render it absolutely necessary to make two journies, one to take possession and the other to attend the sale, such circumstances must be specially stated, so as to shew that the insolvent's estate has been benefited, otherwise a portion of the charges will be disallowed.

penses: and he this deponent had no other business at S. aforesaid or in the neighbourhood thereof; and this deponent saith that all the sums charged in the annexed bill of costs as paid out of pocket down to the item "bill of costs and copy 2s." have been, to the best of this deponent's belief, paid by or on behalf of this deponent, and that each and every other proceeding or attendance, down to the said item, charged in the said bill were necessarily performed to the best of this deponent's belief.

Sworn, &c.

Re Edward Fentham.

	£	s.	d.
1827, April. Drawing request for authority	0	2	6
Attending to leave request, and afterwards for authority	0	3	4
Postage thereof, double			
Attending instructing auctioneer	0	3	4
Attending settling catalogue	0	3	4
Attending sale, (according to distance)....			
Drawing & ingrossing affidavit of auctioneer	0	2	6
Attending to swear him and oath	0	4	4
Copy catalogue to annex, (according to length of *written* part: 4*d.* per fo.) ..			
Attending auctioneer, receiving money and paid receipt stamp, 1s...........	0	4	4
Drawing statement of account between self and provisional assignee and copy	0	2	0
Drawing affidavit of self in support, attending to swear same and oath	0	4	8
Porterage and booking parcel to London	0	1	8
Agent attending bankers in London to receive money remitted	0	3	4
Bill of costs and copy	0	2	0
Paid taxing	0	1	0
Attending	0	3	4
Carried forward £			

Attending in country office filling up certificate and request and attending provisional assignee, paying in money and paid for certificate of same	0	3	10
Carriage of parcel with documents to London			
Porterage and booking with papers back	0	1	8
Carriage			
Letters, &c.	0	2	0

The above bill is taxed by Mr. Richards, in the country office, who marks the back of the account thus,

Balance	23	14	1
Amount of taxed costs	3	14	1
To pay into Court	£20	0	0

The agent then fills up a request to pay the balance into Court, which request is exchanged for Mr. Richards's certificate of the application to enter money, &c.; that certificate is taken to the provisional assignee and the money therein stated* paid into Court.†

On paying the money to Mr. Dance, a certificate thereof should be obtained from him, which last certificate, together with the above stated accounts, &c. are to be produced at the hearing.

Property in Town Cases.

In town cases, where the property is within or near London, an account thereof is taken to Messrs. Dawson and Cafe, of 48, Great Marlborough Street, in the following form,

* In all cases whether town or country where money is to be paid into Court, the certificate of Mr. Richards must be first obtained.

† When the Commissioner on the circuit orders the discharge to issue *on a specific sum* being paid into Court, the expences of remittance, paying into Court, certificate of provisional assignee, &c. cannot be deducted *from* such amount.

Edward Fentham, King's. Bench, 16,000. *Property to be given up at* [naming the place].

Here set out an exact copy from the schedule.

to be signed by the attorney.

Where any property of an insolvent to be heard before the Court, is in the country, an authority, as in p. 225, is generally granted to the insolvent's attorney; if however the property is at a distance, (exceeding 30 miles,) he must not incur expenses either by personal attendance, or sending persons from London, but employ another attorney of the Court, if any within a reasonable distance of the place where the property lies; if none, any other attorney who can be recommended by his London agent. Such attorney so deputed makes the return that he has sold in pursuance of authority from C. D. the attorney duly authorized by Henry Dance, Esq. the provisional assignee, &c.

The auctioneer, country attorney, &c. make affidavits, as above set out, pp. 226, 227, so far as applicable; the costs are taxed, money paid into Court, and the documents and certificate annexed to the schedule.

ALLOWANCE under 17th sec. 7 G. 4.

The 17th sec. 7 G. 4. empowers the Court to order the provisional or other assignee to pay to the prisoner out of his estate and effects, such allowance for his support and maintenance during his imprisonment and previous to the adjudication, as to the Court shall seem reasonable and fit. This application cannot be made until there is money in Court, or in the hands of the sub-assignee, out of which the allowance can be ordered to be paid.

The application is made on a certificate from the provisional assignee, of the money in Court, where that is the case, and an affidavit of the insolvent, stating his situation in life, the sum of money in court,

when he went into custody, what state his proceedings are in, when he is to be finally heard, what money he had when he first went into custody or hath since received, the number of his family, and other means of subsistence. Where the money is in the hands of the sub-assignee, and he refuses to admit the fact in writing, the best evidence must be given, on affidavit, to the Court of the fact of money being in sub-assignee's hands, and amount thereof as near as may be.

By the 56th sec. 7 G. 4, where the prisoner shall upon adjudication be liable to further imprisonment at the suit of his creditor or creditors, the Court may, on the application of the prisoner, order the creditor at whose suit he shall be imprisoned, to pay such prisoner not exceeding four shillings a week, and, on failure of payment, the prisoner to be discharged from custody at the suit of the creditor so failing to pay the same.

Allowance under 56th sec. 7 G. 4.

The application is made on an affidavit as follows, for a rule on the detaining creditor to shew cause why he should not pay the insolvent not exceeding four shillings per week, or in default thereof, why the insolvent should not be discharged.

In the Court for Relief of Insolvent Debtors.

In the matter of the petition of E. F., a prisoner confined for debt in the gaol of L. in the county of L.

E. F. late of C., in the county of D., maltster, the abovenamed insolvent, maketh oath and saith, that he was committed to the said gaol of L., on the first day of March last, and hath ever since continued therein; And this deponent further saith, he presented his petition to this Honourable Court, pursuant to the act

Form of affidavit for allowance under 56th sec.

passed in the 7th year of the reign of his present Majesty, to amend and consolidate the laws for relief of insolvent debtors in England, and executed the usual assignment, and also filed his schedule; and that, pursuant to an order of this honourable Court he was, on the 1st day of May last, heard before Henry Revell Reynolds, esquire, his Majesty's chief commissioner, touching the matters of his said petition and schedule: and this deponent further saith, that upon such hearing, the said commissioner did adjudge, that he, this deponent, had fraudulently mortgaged part of his property before the commencement of his imprisonment with intent of diminishing the sum to be divided among his creditors; and that he, this deponent, should remain in custody for the space of two years from the filing his petition: And this deponent further saith, that the said property so adjudged to have been fraudulently mortgaged as aforesaid, consisted of [set it out], and was mortgaged to L. M. [set out his residence, trade or profession, when mortgaged, and for what consideration]: And this deponent saith, the said L. M. is not in any respect related to this deponent [or as the fact is]; and that the said L. M. hath not, directly or indirectly, given to or assisted this deponent *or any of his family* with any money, or otherwise howsoever during his this deponent's confinement in custody as aforesaid, nor hath he this deponent any reason to expect, nor doth he expect, or believe, that the said L. M. will hereafter give to, or assist this deponent, *or any of his family* with any money, or in any other manner whatsoever: And this deponent further saith, he doth not receive any county, parochial, or other allowance whatever, (save and except the gaol allowance, which is as follows [set it out],) nor doth he this deponent, hold, nor is he in expectation of, any situation in the

said gaol, whereby any profit, advantage, or emolument can or may be derived to him, neither is he this deponent, able to earn any thing towards his support; nor has he any friends whom he hath any reason to expect will in any manner contribute towards his maintenance; and that he hath no means whatever of obtaining any support, unless by the allowance under the 56th section of the said act of parliament; he, this deponent, being in great distress, and in want of the necessaries of life, save the gaol allowance as aforesaid: And he, this deponent, further saith, he hath a wife and three children, residing at, &c., who are wholly maintained by the parish of, &c., [or as the fact is, by friends, and whom, by name and description], and that his said wife and children are wholly unable to assist this deponent with any of the necessaries of life, or with money, or any other means whatever of obtaining the same: And this deponent further saith, he hath not heretofore made any application to this honourable Court for an allowance under the 56th section of the said act of parliament, [or as the fact is; and if an application has been before made and the rule nisi discharged, the fact must be stated, and when, and as to his information and belief, the grounds on which it was discharged.] E. F.

Sworn, &c. before me,

X. Y. a master extraordinary in chancery.

To the Court for Relief of Insolvent Debtors.

In the matter of the petition of Edward Fentham,

Sheweth,

That your petitioner has been adjudged to [set out adjudication] that he is in great distress, and for the reasons contained in the annexed affidavit,*

* The petition may refer to the affidavit, but the affidavit must not refer to the petition.

Humbly prays your honourable Court to grant him a rule, calling on his detaining creditor to shew cause why he should not pay him a sum not exceeding four shillings per week, pursuant to the 56 s. 7 G. 4. c. 57.

And your petitioner will ever pray,

E. Fentham.

An office copy of the adjudication is to be annexed to the above affidavit and petition; the whole are then endorsed:

In re Edward Fentham,
Lancaster Castle.
No. 16000.
Petition and affidavit for allowance
under 56 s. 7 G. 4. c. 57.

The attorney and agent's name being written at the bottom of the indorsement; the papers are then left in the town or country office of the Court according to the gaol where the insolvent is confined, and in three or four days, enquiry may be made for the rule nisi.

The affidavit contains the various facts and negatives from time to time required by the court on similar applications. If the deponent is an unmarried man, he must not merely omit that part relative to wife and children, but he must state, in lieu thereof, that he hath not any wife or children; and so with respect to any other part of the affidavit, that it may be necessary to reverse or qualify to meet the facts of his case. The affidavit must be clear and positive, so that if false, perjury may be assigned thereon, otherwise the application will be refused; or if rule nisi obtained, it will be discharged.

An order nisi being granted, the creditors on whom notice is to be given by the order, must be served a reasonable time before the day of shewing cause, and an affidavit of the service of the order nisi must be made. This affidavit is then to be left at the office of the Court two days before the day of shewing cause.

Order for payment of allowance to be served on creditor.

If the Court shall grant any allowance, the order absolute must be forthwith served on the creditor, who is directed to pay the same, and should the creditor neglect, a rule nisi for the discharge of the insolvent is obtained on the following affidavit and petition, or by motion without the petition.

In the Court for Relief of Insolvent Debtors.

In the matter of the petition, &c.

Affidavit of service of order absolute for allowance, and of nonpayment thereof.

M. N. clerk to C. D. of, &c. attorney at law, E. F. the abovenamed insolvent, and L. P. turnkey of the said gaol of L., severally make oath, and say; and first, this deponent M. N. for himself, saith, that he, this deponent, did, on the 3rd day of June instant, serve H. I. the creditor of the said insolvent mentioned in the order of Court hereunto annexed, with a true copy of the said order of Court by delivering the same to his wife, at his house at, &c. And this deponent, the said E. F. for himself, saith, he did not on Monday, the 18th day of June instant, receive the sum of 4s. mentioned in the order of Court hereunto annexed, nor was the same tendered or offered to him, nor doth he know or believe that any person received the said sum of 4s., or had the same tendered or offered, for or on the behalf of this deponent. And this deponent the said L. P. for himself, saith, he is turnkey at the said gaol of L., and that he did not receive the said sum of 4s. on Monday, the 18th day of June instant,

for the other deponent the said E. F., nor was the same tendered or offered to him, nor doth he, this deponent, know or believe that any other person received the said sum on behalf of the said insolvent: And it was the duty of this deponent to receive all sums of money paid by creditors at the gate or lobby of the said prison, for insolvents, on Monday, the 18th day of June instant. M. N.

Sworn by the said deponents }
M. N. *&c. before me,* } E. F.
L. P.

X. Y. a commissioner for taking affidavits in the court of Exchequer at Westminster.

To the Court for Relief of Insolvent Debtors.

The humble petition of E. F., late of C., in the county of D., maltster,

Sheweth,

That your petitioner, for the reasons set forth in the annexed affidavit, conceives himself entitled to his discharge, as to the detainer of H. I.

Your petitioner therefore humbly prays that a rule may be granted him calling on the said H. I. to shew cause, why your petitioner should not be discharged by reason of the nonpayment of the sum of 4s. mentioned in the annexed rule of your honourable Court,

And your petitioner shall ever pray,

E. F.

The above affidavit and petition is endorsed :—

Petition, &c. for rule nisi for discharge for nonpayment of weekly allowance : and are left at the town or country office of the Court, according to the situation

of the gaol; the rule nisi being obtained and served, the same with the affidavit of service, are endorsed, and left two days before the day of shewing cause at the said office.

MARRIED WOMEN.

The 72nd s. 7 G. 4, p. 144, enables a *feme covert* to take the benefit of the act. The proceedings will be in every respect the same as in the case of any other insolvent, except the form of the assignment* and the entitling of the papers. If she lived separate from her husband when the debt was incurred, her own description should come first: thus *M. F. late of L., in the county of L., carrying on business as a general shopkeeper, wife of E. F., of C., in the county of D., maltster;* if she lived with her husband at the time of becoming indebted, then she may be described as *M. F. wife of E. F.*, &c. Should the debt have been contracted prior to her coverture, the description will be *M. F., formerly M. C., of, &c. spinster, and late of, &c., shopkeeper, now the wife of E. F., of, &c., sued with the said E. F.*

INSANE PRISONER.

The 73rd s. 7 G. 4. c. 57, p. 147. authorises the Court, to discharge prisoners of unsound mind; the proceedings are as follow.

Magistrate's record and certificate of insanity of prisoner.†

Essex to wit. Whereas by virtue of an act of parliament made and passed in the seventh year of the reign of His present Majesty, entituled, an act to amend and consolidate the laws for the relief of insolvent debtors in England; We A. B. and C. D., esquires, two of His Majesty's justices of the peace for the said county of Essex, have been required by T. C, the gaoler or keeper of his Majesty's prison at

* Apply to the provisional assignee for printed form of assignment.

† To be on parchment of the same size as the ordinary insolvents' petitions under the act.

Chelmsford, in and for the said county, to attend at the said prison and enquire into the state of mind of E. F., late of C., in the county of E. aforesaid, maltster, a prisoner confined for debt in the said prison. And we, the said A. B. and C. D., in pursuance of such request and of the said act, this day attended at the said prison and enquired into the state of mind of the said prisoner, and examined on oath the said T. C., the keeper of the said prison, and also O. P., surgeon of the said prison, and it appears to us, that the said E. F. is of unsound mind, and therefore incapable of taking the benefit of the said act in such manner as a person of sound mind might do, and we hereby record the fact and certify the same to the Court for relief of insolvent debtors. Witness our hands and seals this 2nd day of May, 1827.

A. B. (*L. S.*)

C. D. (*L. S.*)

Petition to the Court.*

To the Court for Relief of Insolvent Debtors.

The humble petition of A. Y. of, &c. gentleman, on behalf of E. F., late of C., in the county of E., maltster, a prisoner confined for debt in the gaol of C., in the county of E.

Sheweth,

That the said prisoner was first charged in custody in the said prison on the 26th day of April, 1827, at the suit of H. I. for the sum of £50.

* To be on parchment of the same size as the ordinary insolvents' petitions under the act.

where the said prisoner now remains confined at the suit of the said H. I.

That the said prisoner now is and hath been for some time past of unsound mind, and therefore incapable of taking the benefit of the act of parliament made and passed in the seventh year of the reign of His present Majesty to amend and consolidate the laws for the relief of insolvent debtors in England, in such manner as a person of sound mind might do.

Your petitioner therefore, on behalf of the said prisoner, most humbly prays your honourable Court, that the said prisoner may be discharged from custody in pursuance of the 73rd section of the said act.

And your petitioner will ever pray, &c.

A. Y.

**Subscribed by the said A. Y. on the 2nd day of June, 1827, in the presence of*
C. D. *attorney at law.*

A retainer is signed to the attorney, and a copy of cause procured as in other cases; and the said retainer, copy of cause, and justices' certificate being annexed to the above petition, the petitioner either personally or by counsel moves the Court to file the same in the town department, at the office of the Court, and for an order to issue, pursuant to the 73rd sec. of the 7 *G.* 4. of the intention to apply for the said prisoner's discharge.

Having obtained the order of the Court, a copy of such order of the Court is to be served on the detaining creditor, or his attorney, twenty-one days before

* If the petitioner is an attorney of the Court, the attestation is not necessary.

the day of application, mentioned in the order, together with a copy of the following notice.

The following notice is also to be inserted in the gazette and the two newspapers mentioned in the order of Court, instead of the ordinary advertisement.

By order of the Court for Relief of Insolvent Debtors.

Notice to be served on creditor and inserted in Gazette and newspapers, pursuant to 73rd s. 7 G. 4.

Notice is hereby given, that two of His Majesty's justices of the peace for the county of Essex, have, in pursuance of an act of parliament made and passed in the seventh year of the reign of His present Majesty, to amend and consolidate the laws for the relief of insolvent debtors in England, certified, to the said Court, that E. F., late of C., in the county of E., maltster, a prisoner confined for debt in His Majesty's gaol or prison of C., in the said county of E., is of unsound mind, and therefore incapable of taking the benefit of the said act in such manner as a person of sound mind might do: And that a petition has been presented unto the said Court by A. Y., on behalf of the said prisoner, praying that the said Court would discharge the said prisoner from custody, in pursuance of the 73rd section of the said act: And the said Court thereupon ordered, that notice be inserted in the London Gazette, and the two newspapers called the Essex Herald, and Chelmsford Chronicle, that application will be made to the said Court for the discharge of the said prisoner on the 2nd day of July next, at the hour of nine o'clock in the morning, at the Court for relief of insolvent debtors, in Portugal-Street, Lincoln's-Inn-Fields, of which all parties concerned are to take notice.

The newspapers together with the affidavit of service of the notice and order of Court, on the detaining creditor, are to be lodged in the office of the Court,

ten days before the day mentioned in the order of Court, and on which day the person applying on behalf of the prisoner must personally appear, and pray the discharge of the insolvent.*

INFANT.

Under the former acts infants were considered entitled to their discharge, and discharged accordingly. The judgment of His Honour the Vice Chancellor, in

* In re Thomas Fairfax junior, on behalf of Thomas Fairfax, a lunatic. 29 July, 1824. *Mr. Heath*, for Curtis, detaining creditor, objected to counsel praying the discharge of the lunatic without the petitioner also appeared, that he (the petitioner,) might be examined in the same manner as all other petitioners in that Court were examined.

Mr. Pollock for the petitioner, insisted that he ought not to be called on to appear in Court the same as an insolvent petitioner; if the other side thought witnesses of any service in such a case, they might have subpœnaed the petitioner and made him a witness: as to the utility of the practice he would suppose the petitioner not to be acquainted with the lunatic or his affairs, and it was not necessary that he should be acquainted with either; and as to the possibility of the petitioner in all cases attending, he would suppose, as the case had once occurred, that the petitioner was confined in the gaol of Durham, how could he appear before the Court in London?

The Court, ordered the case to be adjourned to the following Tuesday, for the petitioner to attend; on which day the petitioner attended, and

Mr. Heath, (apparently with the view of shewing first, that the insolvent was not insane, secondly, undue preference, and lastly that property had been secreted) examined the petitioner at considerable length; four witnesses were also examined on the part of the detaining creditor, as to money supposed to have come to the hands of the insolvent shortly before his imprisonment, and Mr. Heath asked the Court to require the family of the lunatic to deliver in a schedule.

Mr. Pollock, with regard to the first point, contended that the Court could not try the question of lunacy, the documents required by the act of parliament had been filed, and were not impugned; as to the second and third points nothing had been made out, but even if a strong case had been made, he was prepared to contend the Court could not adjudicate in the case of a lunatic under the 17th or 18th sections (1 G. 4. c. 119); he did not see how any part of a lunatic's family could be required to file a schedule, nor could he understand what use could be made of it if filed.—Discharge ordered to issue.

Burton v. Haworth, which will be more particularly alluded to, coupled with the extended terms of the assignment in the act of the 7 *G*. 4. c. 57, and the act requiring a warrant of attorney to be executed before adjudication, has given rise to some doubts whether an infant can be legally discharged under the existing act.

The doubtful points seem to be, whether an infant is in such legal custody as to entitle him to petition the Court; whether he is legally capable of executing such a deed as the 11th section requires an insolvent petitioner to execute; and whether the warrant of attorney required by the act, executed by an infant, would be valid.

The Vice Chancellor in Burton v. Haworth*, decided that an infant tenant in tail taking the benefit of the insolvent act, (49 *G*. 3. c. 115), his estate tail

* 5 Mad. 50. General Burton was tenant for life in equity, with remainder to the plaintiff in tail, with remainders over. The plaintiff during his infancy took the benefit of the insolvent act, 49 G. 3. c. 115; afterwards, when of age, he suffered a recovery, with the concurrence of the tenant for life, to the use of General Burton for life, with remainder to the plaintiff in fee. The defendant purchased the estate of the tenant for life, and then contracted with the plaintiff for his remainder in fee.

A bill was filed by the plaintiff for a specific performance of the contract, and the title was referred to Master Campbell, *who reported, a good title could be made.* The defendant excepted to this report, and the exceptions came on to be heard.

The *Vice Chancellor* was strongly inclined to the opinion, that an infant was not within the 49th sec. of the act, [this section declares the estates of which prisoners claiming the benefit of that act are seised in tail are to be delivered to the creditors as if such person had actually levied a fine or suffered a common recovery, and thereby had become seised in fee], because he could not defeat his estate by fine or recovery, but decided in favour of the title, upon the ground, that an infant could not be an insolvent debtor, within the provisions of the act, because he could not legally be in custody for debt. Exceptions overruled.

did not pass to his assignee, *because he could not be legally in custody for debt.**

It is, by some, thought that the assignment, in the large terms required by the act, would be void *ab initio*, an infant being considered incapable of conveying *future* estate; and supposing the assignment is merely voidable, yet the Court would not adjudicate where an infant insolvent might, on coming of age, avoid the deed and thereby invalidate the acts of the assignee.

The court of Common Pleas† declared a warrant of attorney given by an infant to be *absolutely void*, though the infant appeared to have given it, (knowing it was not valid,) in collusion with another person.

The point respecting the warrant of attorney is admitted to present considerable difficulty‡; the point, on which the case of Burton v. Haworth turned, is, by some considered the least difficult, as it is conceived that, whether the person who is in *actual custody*, *upon process for debt*, be a minor or not, yet the act of parliament (7 G. 4) is sufficient to authorise the Court to

* See Maddox v. Eden, 1 B. and P. 480. Where the Court refused to discharge a defendant on a common appearance on the ground of infancy.—Also Finlay v. Jowle, 13 East 6, where the court refused to discharge an infant in execution for costs, who had sued without prochien amy or guardian. In Gardiner v. Holt, 2 Strange, 1217, the court refused to discharge an infant plaintiff in execution for costs, on motion, saying it was matter of error if costs could not be given, vide Thrustout dem. Dunham, an Infant v. Percival, Barnes 183, and cases therein cited.

† Saunderson v. Marr, 1 H. B. 75.

‡ *Ex parte Deacon*, 5 B. and A. 759. It was held, a married woman was not entitled to be discharged under the insolvent act; *she not being capable of executing a warrant of attorney*, and complying with the other terms required by the 1 G. 4. c. 119, s. 25. Note: There is in the 7 G. 4. a special enactment to enable the Court to discharge a feme covert.

adjudicate, as it is enacted, (10th section) that *any person** *in actual custody*, upon any process for debt, &c. may apply in a summary way for discharge: with regard to the assignment some difficulty presents itself by reason of its conveying *future* estate; at the same time it is thought that under the particular circumstances it might be held that such deed was for the infant's benefit† at the time of the execution.

I have noticed a few points and cases in the hope that, on the first occasion which may offer, the parties interested may be induced to look further into the subject, and a sufficient argument may be elicited to remove or confirm existing doubts.

Filing petition nunc pro tunc.

By 11th s. 7 G. 4. p. 89., the Court is empowered to order an amended petition to be filed as of the date of the original petition.

When it becomes necessary to file an amended petition care must be taken that it is dated the same as

* In the act of the 49 G. 3. c. 115, on which the above mentioned case of Burton v. Haworth, arose, it is enacted, That all and every person and persons who on the first day of February, 1809, were *charged in any prison for the nonpayment of any debt*, &c. under £2000. in the whole, were entitled to apply for relief.

† Co. Litt. 172. a. "An infant may bind himselfe to pay for his necessary meat, drinke, apparell, necessary physicke, and such other necessaries; and likewise for his good teaching or instruction, whereby he may profit himselfe afterwards: but if he bind himselfe in an obligation or other writing with a penalty for the payment of any of these, that obligation shall not bind him; also other things of necessity shall bind, as a presentation to a benefice, for otherwise the laps shall incur against him. Also if an infant be an executor, upon payment of any debt due to the testator, he may make an acquittance; but in that case a release without payment is voyd: and generally whatsoever an infant is bound to do by law; the same shall bind him, albeit he doth it without suit of law." See also Zouch v. Parsons, 3 Bur. 1794. Fisher v. Mowbray, 8 East. 330. Maddox v. White, 2 T. R. 159.

the original petition: it will have the words above the attestation "Filed nunc pro tunc by order of the Court."

If, as is most common, the error in the original petition was the omission of a detaining creditor, and it happens that such creditor has not been served *as a detaining creditor*, the hearing will be adjourned to effect the service: therefore where the attorney has made a timely discovery of the omission, he will cause the detaining creditor whose name is omitted in the petition to be personally served: in all cases where an amendment of the original petition becomes necessary a fresh copy of causes must be produced.

If a detainer is lodged after the petition is signed*, a copy of causes is produced at the hearing, the new detaining creditor is so marked in the schedule by way of amendment, and the discharge includes such detaining creditor.

CHANGING ATTORNEY.

The insolvent cannot change his attorney without paying his bill of fees in this Court, as taxed.

A consent to change the attorney must be filed with the schedule.

The attorney's bill must either be paid as delivered, or be taxed by the proper officer; on payment, a demand should be made of a consent to change the attorney, and, if refused, a summons taken out to change the attorney.†

Application may be made under the 56th sec. without an order to change attorney: from the petition to

* In this case the service as on an ordinary creditor is generally considered sufficient; if however the detainer is lodged in time to give personal service and the fact is known sufficiently early to the attorney, it is advisable to serve such detaining creditor personally.

† The Court may be moved, but as that course is productive of considerable delay, a summons is the most ready and advisable course.

the adjudication is an entire proceeding; and during that time, an insolvent cannot change his attorney without leave: on the adjudication, the case is at an end as far as regards the attorney; the application under the 56th sec. is merely collateral, and may or may not be made, as the insolvent pleases.

Where insolvent divested of property returned in the schedule.

In cases heard before the justices if the property mentioned in the schedule should be distrained, and cannot consequently be sold, and the produce paid into Court; or the assignee is prevented taking possession; a special application must be made to the Court, that the discharge may be delivered out without bringing into Court the produce of the property (stating it) mentioned in the fifth side of the schedule*, such application must be on a very special affidavit, as will be seen by the following decision.

In re *Curtis*, 25th *July*, 1822. Mr. *Prendergast*, moved, that the discharge might issue forthwith, the property mentioned in the fifth side of the schedule being distrained, and taken in execution. The motion was on the insolvent's affidavit, whereby it appeared he returned in his schedule, stock in trade, tools, &c. of the supposed value of 60*l.* That shortly after the schedule was filed, his landlord distrained for 20*l.* 5*s.* for half a year's rent, and sold part of the said stock under such distress. That the assessed-tax collector seized and sold other part of the stock, to satisfy 4*l.* 3*s.* assessed taxes. That insolvent's wife sold other part to the amount of 2*l.* 3*s.* 2*d.*, to pay poor rates, and that the remainder was taken in execution at the suit of a creditor, on a judgment obtained for 131*l.* 8*s.* 6*d.* And the insolvent further swore, that on the hearing of his petition at the sessions, he was opposed, and

* The motion paper should always state, what the Court is applied to, to dispense with.

the whole of these facts gone into, and explained to the satisfaction of the justices.

The Court.—It does not appear by the certificate of sessions, the above facts have been enquired into; the certificate is wholly silent on the subject; the insolvent must, therefore, conform to the usual practice, by producing the notices of distress, and the several receipts, properly verified by the auctioneer or other indifferent persons; and it must be satisfactorily shewn, that such several distresses and the execution were made and levied without any fraud or collusion whatever, and whether the judgment was on a warrant of attorney, or cognovit, and in either of those cases, when the warrant of attorney was given, or judgment confessed, and in what degree of relationship the plaintiff in the judgment stands to the insolvent.—Motion refused.

If an assignee is duly appointed, the property may be delivered up to him, and on his certifying, that he is in possession of all the property mentioned in the schedule, and his signature to such certificate being verified by affidavit, the discharge will be delivered out.

On application for new order for hearing, affidavit must shew if any notice of opposition given.

In re *Powell*, 13th *March*, 1822. Mr. *Heath*, moved for leave to amend schedule, and for new order for hearing. It appeared by the affidavit, that the insolvent had had an order for hearing at an adjournment of a quarter sessions just past, and that he did not appear at the sessions, having discovered that the schedule required amendment.

The Court said, the affidavit was insufficient; it should shew whether the insolvent had or had not notice of opposition given to him, and whether any creditors, and whom, by name, attended the sessions to oppose; and he should negative in the usual words,

having received, sold, spent, &c. any part of his property since filing his schedule.—Motion refused.

The insolvent should always appear at the sessions after the order for hearing is served, and the justices should certify specially.

PROCEEDINGS

AGAINST INSOLVENTS.

THE object of creditors in opposing insolvents, is to enquire into property supposed to be secreted or imperfectly disclosed; and punish insolvents for some of the offences mentioned in the 48th or 49th sec. of the 7 G. 4.

Notices of opposition in town cases are entered in a book* kept at the Insolvent Debtors' Court Office, three *clear* days before the day of hearing, exclusive of Sunday. In country cases, the notice is given in writing to the insolvent three clear days exclusive of Sunday†, before the day of hearing:

In the Court for Relief of Insolvent Debtors.

Notice of opposition in country cases.

In the matter of the petition of E. F. a prisoner confined for debt in the gaol of L., in the county of L.

Take notice, That I intend to oppose your discharge, on the hearing of your petition. Dated this 1st day of May, 1827.

Your's, &c.

To Mr. E. F. the abovenamed insolvent. } H. I.

* One creditor having entered notice of opposition any other creditor may oppose without further notice.

† 17th Rule of Court, p. 175.

The notice should be signed in duplicate; and in case the person who delivered it to the insolvent, the keeper, or turnkey of the prison, cannot attend to prove the service, the following affidavit, annexed to the duplicate notice, will be sufficient.

In the Court for Relief of Insolvent Debtors.

Affidavit of service.

In the matter of the petition of E. F., a prisoner confined for debt in the gaol of L., in the county of L.

A. B., of, &c., maketh oath and saith, that he did, on the 1st day of May instant, serve the abovenamed insolvent with a true copy or duplicate of the notice hereunto annexed, by delivering the same to the said insolvent personally [or to the keeper, or the turnkey of the said prison.]

A. B.

Sworn at, &c. before me,
C. D. a commissioner for taking affidavits, in the Court of King's Bench, at Westminster.

In country cases, books, &c. may be inspected.

In country cases the insolvent's duplicate petition and schedule, and his books, papers, and writings, are, by the 77 s. 7 G. 4, p. 152, directed to be lodged with the clerk of the peace or his deputy, within ten days after the order for hearing issued, where they may be inspected on payment of a fee of one shilling.

In town cases books may be inspected.

In town cases the insolvent's books and papers are lodged in the office of the Court, and may be inspected, together with the schedule, by the creditors, up to the last day for entering opposition.

If a solicitor on behalf of a creditor, attends to inspect the schedule at the office of the Court, he must take with him the notice served on the creditor, or he will have to pay 1s. for the search.

The same rules of evidence are to be observed in this, as in other courts, and as creditors often oppose in person*, I shall here state briefly, the general rules of evidence which must be adhered to in such cases.

Rules of evidence to be observed.

Hearsay is not evidence, and cannot be admitted. This is a general rule; for the reason that the person to be affected by the evidence should have the opportunity of interrogating the witness as to his means of knowledge of the fact to which he is deposing. There are, however, some exceptions to this rule; such as, on questions of pedigree, where there is a great difficulty of proving remote facts by living witnesses; and in certain cases the declarations of a deceased individual, when made under circumstances where the party may be supposed to be without an interest and without a bias, &c.

Hearsay not evidence.

The best evidence is always to be produced, which the nature of the case admits: This is also a general rule, as the courts require the strongest possible assurance of the matter in question. No evidence is received, which, from the nature of the matter, better evidence appears to be in the possession or power of the party; thus, copies of instruments cannot be read, unless the originals are in the hands of the adverse party, and he does not produce them, after notice so to do; nor will verbal evidence be admitted to prove the contents of a written instrument; always supposing such written instrument or a register of it, can by any means be produced; this strict rule is dispensed with in certain cases, such as, where it is necessary to prove matters of record: in most of such cases an examined copy may be proved; and, under certain acts of parliament, the strictness of proof is

The best evidence to be produced.

* Attorneys are allowed in all cases, except in town, to oppose for their clients: a warrant of attorney given to induce a creditor to withdraw opposition, will be set aside, 4 B. & A. 691.

dispensed with. It is advisable however to consider the general rule to be, that *the best evidence must be produced which the nature of the case admits.*

Evidence confined to points in issue.

The evidence to be confined to the points in issue. The sole object of evidence being to ascertain the truth of the disputed facts put in issue between the parties, evidence to other points will not be admitted. The relevancy of the evidence depends on the nature of the case; for instance, suppose the question between the parties to be, whether A. the landlord, and B. the tenant, had agreed that the rent should be paid quarterly or half-yearly, it would be irrelevant to prove an agreement between A. and his other tenants; the question being what was the particular agreement betweeen A. and B., and not what was the agreement between A. and other persons.

The other general rules of evidence, such as: that the affirmative of the issue is to be proved, and that the substance only of the issue need be proved, need not here be further noticed, nor the rules respecting presumptive evidence, and the number of witnesses to prove particular facts.

Interested witnesses.

The general rules respecting witnesses must be borne in mind, viz. witnesses, interested in the event of a cause, are incompetent to give evidence in favour of the party to which their interest inclines them: notwithstanding this general rule, courts are rather inclined to hear the witness than reject him unheard, leaving it to be considered how far such evidence has been supported, or its own character entitles it to credit. A witness who has a direct interest in the success of the suit is disqualified from giving evidence; if, however, he is merely interested in the *question* put to him, and not in the *event of the suit* he is not disqualified. In the insolvent debtors' Court

the insolvent is necessarily examined on oath; and the Court also permits the creditor to be examined as a witness: afterwards considering how far the evidence given is entitled to credit from its general character, and how far it is supported or contradicted.

What witness cannot be examined to.

No man can be examined to prove his own infamy; however, if the confession does not subject him to any future punishment, he may be examined; for instance, a witness may be asked if he has not stood in the pillory for perjury.

No attorney or other person entrusted with the secrets of the cause or matter by the party himself, i compelled, or rather allowed, to give evidence of such matters as came to his knowledge by virtue of such trust and confidence; but he may be examined as to mere matters of fact, such as the execution of a deed, and the like.

Husband and wife cannot give evidence for or against each other, except in the case of violence done to the person of the other.

Suggestions on conducting the opposition in person, or by attorney.

Having perused the schedule and balance sheet, it will be considered whether the cause of insolvency stated at the bottom of the balance-sheet, is the true cause; and whether the insolvent has or has not made a full disclosure of his estate. In addition to any known facts, try the schedule and balance sheet, by comparing each year's transactions on the debit and credit sides with each other, and strike a yearly balance; it may then be discovered when the insolvency commenced, and the annual increase of it, and probably the cause; at least, such a course will materially assist in examining the insolvent on his dealings and conduct, and as the insolvent's books and papers are, in all cases filed either at the office of the Court in town, or with the clerk of the peace, in country cases

(as the note at the bottom of the notices for the hearing will inform,) it is advisable to look at such books and papers, particularly at the account books, and see if the entries agree with the schedule; and if the insolvent kept a waste or day-book, and journal or ledger, and a cash book, to compare the entries with each other in a few instances, and also to notice the general appearance of the books, whether the entries appear to have been made at one or at different times; and whether the books have any leaves taken out, or inserted; or the books otherwise mutilated or falsified.

Reference to officer of the Court or examiner.

Should there be any reasonable ground to suppose the insolvent has fraudulently made away with or concealed property, and the creditor is not in a situation to prove the fact clearly; he may apply to the Court in town cases, and the commissioner on the circuit, or justices in country cases, when the prisoner is called for hearing, to refer* the case to an officer of the Court in town, or examiner in the country; on a reference being ordered, the further hearing of the insolvent is adjourned; and it is then the duty of the creditor to apply to the officer to whom the matter is referred, for an appointment to proceed; such appointment is to be served forthwith on the insolvent, or his attorney; and on the day appointed, the creditor or his attorney may examine the insolvent, his books, papers, and witnesses, for two hours each attendance: as many attendances will be granted, as to the officer shall appear necessary. The creditor will have to pay £1. to the officer, and 10*s*. to the gaoler each attendance.†

When such examination is closed, the officer makes

* See 45 s. p. 119. application for the reference is to be supported by oath or affidavit.

† The Court may order, if it sees fit, such expences to be paid out of the insolvent's estate by the assignee.

his report to the Court, and the insolvent is dealt with accordingly.

The course of proceeding at the hearing.

If the case does not require a private examination, but the facts are capable of being laid before the Court in the first instance, the course of proceeding is, to swear the insolvent, and then the creditor, or his attorney in country cases, may either examine him*, or he (the creditor) may be himself sworn and state facts which he knows of his own knowledge, for *hearsay is not evidence;* he may also call and examine witnesses†; in selecting the evidence and examining the witnesses in Court, it will not only be recollected that they are to be questioned only as to what they know of their own knowledge, but it will also be recollected what is above stated as to *the best evidence* being produced; and that the evidence must point to the *fact in dispute* between the creditor and the insolvent, and not in irrelevant matter; and shape the examination accordingly. A party examining his own witness, must not ask him any leading question, that is, such a question as *instructs* the witness what to answer, but on cross-examining the insolvent or his witnesses, much greater latitude is allowed in the mode of putting questions, in order to sift and try the credibility of the testimony.

After the evidence on both sides is closed, and the counsel, (if any), for the prisoner has addressed the

* Where the insolvent has obtained leave to petition or file schedule after the time limited by the act, he is obliged to make an affidavit, see p. 187. which if false, or he has omitted any material statement in his petition, or he is not properly described in his schedule, the order for hearing will be discharged, and in some cases the petition dismissed, see p. 196. to p. 206 and notes on schedule.

† Where an insolvent has removed from a country prison, or rendered in discharge of his bail, coming from the country, the Court may receive affidavits in writing, in opposition.

Court, the insolvent is sworn to the schedule, and executes a warrant of attorney to authorize the entering up judgment against his future estate; and the Court adjudicates either the discharge forthwith, or, not until he shall have remained in prison at the suit of his creditor or creditors according to circumstances, for a limited period.

Opposing creditor's debt; when to be proved.

Unless the opposing creditor's debt is admitted on the schedule, the attorney or counsel should be furnished with an affidavit of the debt*, provided the creditor cannot personally attend: if the creditor is in attendance, the proof of the debt may be taken *viva voce*.

In re *Peel*, 14th *May*, 1822. Insolvent had been brought up for hearing before the Court on a prior day, and at the request of a creditor, whose debt was disputed on the schedule, the case was referred to the provisional assignee, to investigate the accounts, and examine into the truth of the schedule; and no objection was then made by the insolvent. On appearing before the provisional assignee it was required, on the part of the insolvent, that the opposing creditor should prove his debt, before the examination could be entered on. The point was this day brought before the Court: held; that the insolvent's objection came too late, after the creditor had been admitted to oppose in Court.

Subpœna.

A subpœna, *ad testificandum*, for compelling the attendance of the person of the witness, may be had in town cases, at the Insolvent Debtors' Court Office; but at present, the subpœna *duces tecum*, is not used; and when production of deeds, &c. are required, it is

* The affidavit will be entitled, *in this Court*, and sworn before a commissioner of one of the superior courts, &c. See instructions, p. 220, the affidavit should be at least as full and positive as the courts of common law require affidavits to hold to bail.

done by indorsement on the subpœna. This is not the practice of the superior courts; and therefore, it is reasonable to doubt, whether a witness attending in person, but leaving behind the document required by the indorsement, but not called for in the body of the subpœna, would be guilty of a contempt, see 3rd sec. 7 *G.* 4. p. 80, which gives the Insolvent debtors' Court the same power of compelling the attendance of witnesses and production of books, papers, and writings, as are now possessed by the superior courts at Westminster. The body of the subpœna only, is supposed to be the act of the Court; it is tested in the name of the chief commissioner, and also signed by the chief clerk; but the indorsement is the mere act of the party making use of the subpœna. Of the force of a subpœna *duces tecum*, Lord Eldon, in the case of Field v. Beaumont, 1st Swanston's C. c. p. 209, is reported to have said, "that according to the present determinations at law, it would not be discreet to disobey it: for although the party may, in Court, object to produce the documents, yet if the objection is over-ruled, the Court will compel the production." See Amey v. Long, 9 East's T. Rep. 473.

The following form of subpœna may be adopted in pursuance of the power given by the 78th sec. 7 *G.* 4. p. 154.

Form of subpœna *ad test.* by clerk of peace.

George the Fourth, by the grace of God of the united kingdom of Great Britain and Ireland, King, Defender of the Faith, To greeting: we command you and every of you that all other things set aside, and ceasing every excuse, you and every of you, be and appear, in your proper persons, before Henry Revell Reynolds, Esquire, our chief commissioner of the Court for relief of insolvent

debtors in England, on the day of next, at in the county of [or before our justices of the peace for our county of at the quarter sessions of the peace, to be holden at on the day of] by o'clock in the noon of the same day, to testify the truth according to your knowledge, in the matter of the insolvency of *E. F., late of C., in the county of D., maltster,* whose petition and schedule have been filed in the Court for relief of insolvent debtors, pursuant to the statute in that case made and provided, and who has been ordered by the said Court to be examined before our said Chief Commissioner [or before our said justices,] at the time and place aforesaid, and this you, nor any of you shall in no wise omit, under the penalty of every of you of one hundred pounds. Witness, &c. [to be tested on day of schedule being lodged, or subsequently, and signed by the clerk of the peace.]

Duces tecum.

George the Fourth, &c. as in the above, as far as the day of hearing "of the same day;" then: And that you bring with you, and produce at the time and place aforesaid, a certain *deed or instrument, in writing, bearing date on or about, &c., and made between, &c.* (describing it) and then and there testify and shew, all and singular those things which you know, or the said deed or instrument doth import, of and concerning the matter of the insolvency, &c. as in the former.

Offences under 48th sec. p. 121.

An insolvent may be adjudged not entitled to the benefit of the act for any period not exceeding three years for either of the following offences, namely :

Fraudulently with intent to conceal the state of his affairs, *or* to defeat the objects of the act, destroying *or* otherwise wilfully preventing *or* purposely with-

holding* the production of any books, papers, or writings relating to his affairs:

Having kept or caused to be kept false books, *or* made false entries in, *or* withheld entries from, *or* wilfully altered or falsified any such books, papers, or writings:

Having fraudulently, with intent of diminishing the sum to be divided among his creditors, *or* of giving an undue preference to any of his creditors, discharged, or concealed any debt due *to*† or *from*‡ him:

Having fraudulently with intent of diminishing the sum to be divided among his creditors, or of giving

* The withholding books is classed among the highest offences under the act; it will be presumed, when an insolvent wilfully keeps back books, he does so with a fraudulent intent: and the Court generally in these cases adjudge a long period of imprisonment previous to discharge: see 40th s. p. 115, and 77th s. p. 152, requiring books to be filed.

† Concealing debts *due to* the insolvent is very common, and although they may generally be discovered, yet the concealment, or in other words, wilful omission from the schedule of a debt due to the insolvent, is a great offence, and the Court always visits the offending party with a long confinement.

‡ Concealing debts *due from* the insolvent is in daily practice, and too frequently considered by insolvents as no offence; the concealment must have an object, and since the opinion of Mr. Justice *Bayley*, incidentally given in the case of *Jellis* v. *Mountford*, (4 B. & A. 256,) that a commission of bankruptcy, founded on a debt due by an insolvent, and left out of his schedule, would at any time overturn the assignment to the provisional assignee; it becomes a matter of some importance to the creditors mentioned in the schedule, and particularly to the assignee, to prevent by all possible means any such omission. Omissions of debts due by an insolvent, may prevent the creditors discovering the truth of the insolvent's statement, as to the disposition of his property, as the balance sheet, which is intended to exhibit the true state of the insolvent's concerns, and the cause of his insolvency, would present a false balance.

an undue preference* to any of his creditors, made away with, charged, mortgaged†, or concealed any part of his property, of what kind soever, either before or after the commencement of his imprisonment.

Offences under 49th sec. p. 122.

The adjudication in the following cases, may be for any period not exceeding two years from the filing the petition, namely:

For contracting any of his debts fraudulently, *or* by means of a breach of trust, *or* by means of false pretences‡, *or* without having had any reasonable or probable expectation§ at the time when contracted of paying the same:

For fraudulently or by means of false pretences,

* Undue preference, with a fraudulent intent: if the preference given, arose from the importunity of a creditor, or apprehension of legal process it will not be considered an undue preference. See 1 T. R. 155,—6 T. R. 152; 2 B. & P. 582; 1 M. & S. 517; 5 Taun. 633.

† A conveyance of chattels, unaccompanied with possession, is void, 5 Taun. 212. See 30th s. 7 G. 4. c. 57, page 103, as to goods in possession of insolvent with consent of owner. As to fraudulent conveyance,—see 5 T. R. 235; 8 T. R. 521; 3 E. R. 1; 3 M. & S. 571; 1 Moore 189; 4 B. & A. 382.

‡ Fraudulently contracting debts, or by means of false pretences, are offences very nearly allied. It must be recollected, it will not be sufficient, to establish a case against an insolvent for the latter offence, to shew the creditor was deceived by a false statement, or pretence made *subsequent* to parting with the goods, or money; he must shew he was influenced by a pretence, or statement made previous to parting with the property, as the after representation could not have constituted the inducement.

§ It has been frequently held, that the naked fact of the prisoner having been in an insolvent state at the time of contracting the debt, is not sufficient to constitute the offence, but it must appear from collateral circumstances, that his affairs were in such a state that he must have known he had no *reasonable or probable* expectation of being able to pay any debt he might contract.

obtaining the forbearance of any of his debts by any of his creditors:

For putting any of his creditors to any unnecessary expense, by any vexatious or frivolous *defence** or delay to any suit for recovering any debt or sum of money due from him:

If indebted for damages recovered in any action for criminal conversation with the wife, *or* for seducing the daughter or servant of the plaintiff in such action, *or* for breach of promise of marriage made to the plaintiff in such action, *or* for damages recovered in any action for a malicious prosecution, *or* for a libel, *or* for slander, *or* in any *other* action for a malicious injury done to the plaintiff therein, *or* in any action of tort or trespass to the person or property of the plaintiff therein†, where it shall appear to the satisfaction of the Court the injury was malicious.

* If the opposition is for putting the creditor to unnecessary expense by any vexatious or frivolous defence or delay; the proceedings in the action are to be produced and proved, and the amount of taxed costs shewn by the allocatur; the attorney should be prepared to shew the extra expenses which, by the vexatious, frivolous, or dilatory proceedings, have been incurred; sham or dilatory pleas and writs of error, come more immediately within the meaning of the clause; pleading the general issue, and compelling the plaintiff to proceed to trial, where there is no pretence for a defence, is vexatious, and commonly more so than sham pleadings; but the insolvent usually attempts to shew some specious ground at least, for pleading the general issue: the creditor should therefore be prepared to rebut such pretence, by shewing, no defence attempted on the trial, or capable of being made; promises of payment, and assertions of the insolvent's intention to compel the plaintiff to go to trial, merely for the purpose of putting him to cost; and the like:—acceptance of a cognovit or other security for payment of the costs, will be held a waiver.

† Where the opposition is for being indebted in damages for criminal conversation, seduction, &c. &c. as above, an examined copy of the judgment roll should be produced in evidence.

NOTE:—If an insolvent is sentenced under the 47th or 48th sec. of the act, and it is suspected that the detaining creditor is a friend

Opposition to application under 56 sec. 7 G. 4.

An insolvent who has been adjudged under the 47th, 48th, or 49th sec. of 7 G. 4, not to be discharged until he shall have been in custody at the suit of his creditor or creditors a limited period, may apply to the Court for an allowance, under the 56th sec. 7 G. 4, not exceeding 4*s*. per week in the whole. The application is by motion or petition; in either case there is a rule on the detaining creditor* to shew cause.

See the form of affidavit on which the motion for allowance is made, p. 231. The insolvent must, in all cases, clearly shew, he derives no advantage from any undue preference, and that he is in the utmost need: in the case of concealment of property, he must shew, that the property so concealed, is expended or delivered up to his assignees. If the creditor can shew the reverse of any of these facts, it will be good ground of opposition to the motion.

It must be remembered, in all cases, that cause cannot be shewn against any rule, unless an office copy of the affidavit on which the rule nisi was obtained, and also of the rule, is taken by the party shewing cause.

RE-HEARING.†

Every insolvent, if opposed, gives oral evidence on oath, besides which he takes the oath at the end of the schedule, and such latter oath, though short, is very comprehensive; "I, E. F., do hereby swear, that the

of the insolvent's, it will be prudent for some creditor to lodge a detainer against the insolvent; he will not be obliged to proceed further in the action, while the insolvent remains in custody: but such creditor, by becoming a detaining creditor, will be liable to be called on to shew cause, why he should not pay him the allowance under the 56th sec. 7 G. 4.

* The representatives of the creditor may shew cause: the death of the creditor does not entitle the insolvent to his discharge. 1 Bing. 431.

† Re-hearing is under 67 sec. 7 G. 4. p. 139.

contents of my petition filed in this honourable Court, and also of this my schedule, and of all and every part thereof respectively, are true:" If therefore it shall be discovered, that the insolvent has sworn falsely, it will be ground for bringing him again before the Court, in order that the Court may, if it shall think fit, superadd to the term of imprisonment.

The application for a re-hearing is by motion on affidavit setting out the facts; shewing the false evidence, or fraud practised in obtaining the adjudication, and order thereon*: the first rule, calls on the insolvent on a certain day, peremptorily, personally to appear before the Court, that the matter of his petition be then and there re-heard, and such further order made as to the Court shall seem fit, OR that the insolvent do then shew cause to the Court why the same should not be re-heard. On the day mentioned in the rule, the insolvent may either appear in person to be re-heard, or by counsel to argue the rule; in the first event the case will be gone into, in the latter, merely an argument of counsel on affidavits†, when, if the Court decides that the insolvent shall be re-heard, the rule is made absolute, and a day fixed for his appearing. On a re-hearing the creditor must be prepared with evidence, the same as on an original hearing; such evidence to support the points mentioned in the affidavits on which the rule was obtained: it is not allowed to take the insolvent by surprise with a new case.

* The creditor who makes the application should join in the affidavit, which should shew him to be a creditor, and he should swear that the facts set out, came to his knowledge since the hearing.

† This practice is attended with much inconvenience and expense to the creditors, there seems to be one unnecessary brief and attendance of witnesses.

RE-EXAMINATION.*

This rule is similar to the rule for re-hearing in so far as it requires the insolvent to attend *or* shew cause why he should not be further examined. The application differs from that of a re-hearing, as this can only be *by the assignee*, and the immediate object thereof, is not to superadd to the punishment, but to obtain the assistance of the insolvent in adjusting, &c. his affairs. It will be prudent previous to making this application to the Court, to call on the insolvent for the information or assistance required, and if he neglects or refuses, to set out such fact, in the affidavit, and that the assignee deems the information necessary to enable him to get in the estate. It must be shewn on the face of the affidavit that the application is made by the assignee. The affidavit must point to the subjects on which the re-examination is to take place: witnesses are not examined against the insolvent on this rule, as on the re-hearing.

* Re-examination is under 69 sec. p. 141.

OF ASSIGNEES.

BY the 7 G. 4, c. 57, s. 19, the Court at any time after insolvent files his petition, may appoint an assignee or assignees, being a creditor or creditors of the insolvent.

The 16th s. p. 92, authorises the provisional assignee to take possession himself, or by means of a messenger of the Court, *or other person*, appointed by him, of the insolvent's real and personal estate and effects, and if the Court shall so order to sell or dispose thereof; in most cases of emergency this power will be found sufficient previous to the hearing, and, together with the fact of the sub-assignment, vesting the estate by relation as if the first assignment had been made to the sub-assignee by the prisoner, renders it seldom necessary to appoint an assignee before the hearing of the case; at which time the Court, commissioner, or justices are usually enabled, by the investigation, to form a correct judgment of the most proper person to be appointed: If however, creditors deem it advisable to get an assignee appointed before hearing, the applicant must shew special and pressing circumstances.

Appointing assignees.

The practice concerning the appointment of assignees, in cases where no assignee has been appointed before the hearing, is as follows:

They may be appointed by the Court or a Commissioner at the hearing;

They may be appointed by the Court, having been previously nominated

1. by the justices in Wales, or Berwick-upon-Tweed, at the hearing by them;
2. by a majority in value of creditors, whose debts shall be admitted in the schedule;
3. by a majority in value of creditors, who shall meet in pursuance of such notice given by advertisement or otherwise, as shall be in each case directed by the Court or the proper officer for that purpose.

Persons so nominated may apply to be appointed assignees by petition to be filed at the office of the Court, the nominations of and acceptances by such persons, together with all notices, proceedings, and necessary signatures, being duly proved by affidavit:—every such person must also state by affidavit, whether he has been appointed in any other case; and if so, whether he has filed his account in such case.

No person can be appointed who is not a creditor:—and no person will be appointed, who, as assignee in any other case, has failed in any of the duties required of him; nor will any female be appointed.

To call meeting to choose assignees.

To call a meeting of creditors for choice of assignees; prepare the draft advertisement, and leave the same with the provisional assignee at his office.

Advertisement for meeting.

THE CREDITORS of E. F., late of C., in the county of D., maltster, an insolvent debtor, who is in [or

was lately discharged from] the gaol of L., in the county of L., are requested to meet at the house of A., known by the sign of B., at C. aforesaid, on the day of September next, at o'clock in the noon of the same day precisely, for the purpose of choosing an assignee or assignees of the said insolvent's estate and effects.

In what papers to be inserted.

Call in a day or two and the provisional assignee will have underwritten the advertisement, in what newspapers, besides the London Gazette, the advertisement is to be inserted, being usually such as circulate in the neighbourhood of the residence of every creditor, whose debt amounts to twenty pounds or upwards. These advertisements are required to appear ten days before the day of meeting: the advertisements having been duly inserted and the meeting attended one hour, the creditors by themselves, or by their attorneys duly authorised by letters of attorney (*written on unstamped paper*) sign the memorandum; the assignees sign the acceptance of the trust, also the petition to the Court, underneath the memorandum; the assignees also make affidavit, that they have not been assignees in any other insolvent's estate, or, if they have, that they have filed their account, or they shew some sufficient cause for not filing such account: the attorney then makes his affidavit of attending the meeting; the whole of the papers, *including the Gazette and newspapers*, are afterwards lodged with the provisional assignee, who, on being paid 7*s*. 6*d*., delivers out a counterpart of the assignment; which, on being properly executed by the appointed assignee, and attested*, and returned to the provisional assignee, is exchanged for the assignment.

The meeting of the creditors.

Obtaining assignment.

* The witness must add his place of abode and trade or profession.

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They may be appointed by the Court, having been previously nominated

1. by the justices in Wales, or Berwick-upon-Tweed, at the hearing by them;
2. by a majority in value of creditors, whose debts shall be admitted in the schedule;
3. by a majority in value of creditors, who shall meet in pursuance of such notice given by advertisement or otherwise, as shall be in each case directed by the Court or the proper officer for that purpose.

Persons so nominated may apply to be appointed assignees by petition to be filed at the office of the Court, the nominations of and acceptances by such persons, together with all notices, proceedings, and necessary signatures, being duly proved by affidavit:—every such person must also state by affidavit, whether he has been appointed in any other case; and if so, whether he has filed his account in such case.

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Advertisement for meeting.

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was lately discharged from] the gaol of L., in the county of L., are requested to meet at the house of A., known by the sign of B., at C. aforesaid, on the day of September next, at o'clock in the noon of the same day precisely, for the purpose of choosing an assignee or assignees of the said insolvent's estate and effects.

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Call in a day or two and the provisional assignee will have underwritten the advertisement, in what newspapers, besides the London Gazette, the advertisement is to be inserted, being usually such as circulate in the neighbourhood of the residence of every creditor, whose debt amounts to twenty pounds or upwards. These advertisements are required to appear ten days before the day of meeting: the advertisements having been duly inserted and the meeting attended one hour, the creditors by themselves, or by their attorneys duly authorised by letters of attorney (*written on unstamped paper*) sign the memorandum; the assignees sign the acceptance of the trust, also the petition to the Court, underneath the memorandum; the assignees also make affidavit, that they have not been assignees in any other insolvent's estate, or, if they have, that they have filed their account, or they shew some sufficient cause for not filing such account: the attorney then makes his affidavit of attending the meeting; the whole of the papers, *including the Gazette and newspapers*, are afterwards lodged with the provisional assignee, who, on being paid 7*s*. 6*d*., delivers out a counterpart of the assignment; which, on being properly executed by the appointed assignee, and attested*, and returned to the provisional assignee, is exchanged for the assignment.

The meeting of the creditors.

Obtaining assignment.

* The witness must add his place of abode and trade or profession.

executed by him. In town cases, the books and papers left in the office of the Court, by the insolvent, are delivered out at the same time; in country cases the clerk of the peace delivers up the books, &c. on production of the assignment by Mr. Dance and the sub-assignee's receipt for them.

In the Court for Relief of Insolvent Debtors.

At the house of A., known by the sign of B., at C., in the county of D., this 1st day of May, 1827.

Form of memorandum on the meeting.

MEMORANDUM: This being the day appointed in the London Gazette, the Liverpool Mercantile Advertiser, and the Chester Courant newspapers, for the choice of an assignee or assignees of the estate and effects of E. F., late of C., in the county of D., maltster, an insolvent debtor: WE, whose names are hereunder written, creditors of the said insolvent, whose debts are stated *admitted** on his schedule, have chosen and hereby nominate and appoint subject to the approbation of the said Court, H. I., of C. in the county of D., merchant, a creditor of the said insolvent, assignee of the said insolvent's estate and effects.

I accept the said trust, and promise to execute a counterpart of the assignment if the Court shall so please,	H. I. K. L. M. N.
H. I.	O. P. per P. S. By letter of attorney.

* The Rule of Court does not say, *admitted;* but the practice is, not to allow a disputed creditor's vote in the choice of assignees, until he shall have proved his debt. Where a creditor whose debt is disputed, intends making an application to the Court to admit his vote, he should attend the meeting either in person or by attorney and tender his vote.

To the Court for Relief of Insolvent Debtors.

The humble petition of the above-named H.I.,

Sheweth,

That your petitioner has been duly nominated and appointed assignee of the estate and effects of E. F., an insolvent debtor, as will appear by the above memorandum, subject to the approval of your honourable Court.

Petition to confirm nomination.

Your petitioner humbly prays that the said appointment may be confirmed.

And your petitioner will ever pray, &c.

H. I.

In the Court for Relief of Insolvent Debtors.

In the matter of the petition of E. F., a prisoner confined [or lately confined] for debt in the gaol of L., in the county of L.

P. S., of C., in the county of D., gentleman, maketh oath and saith, that he did on the 1st day of May, instant, attend at the house of A., known by the sign of B., at C. aforesaid, at the hour of o'clock noon, being the day, place and time, appointed in the London Gazette, the Liverpool Mercantile Advertiser, and Chester Courant newspapers, for a meeting of the above-named insolvent's creditors for the purpose of choosing an assignee or assignees of the said insolvent's estate and effects, and remained for one hour: and this deponent further saith, that during such attendance of this deponent as aforesaid, O. P., a creditor of the said insolvent, attended by this deponent as his attorney by virtue of the letter of attorney hereunto annexed: and that H. I., K. L., and M. N., three other creditors of the said insolvent, respectively attended, and severally signed the

Affidavit of attending meeting.

memorandum hereunto annexed, in this deponent's presence; and this deponent also subscribed the same on behalf of the said O. P.: and this deponent further saith, that no other creditors of the said insolvent attended the said meeting by themselves or their attorneys [if any creditors attend and dissent, then—except Q. R. and S. T.; but the said creditors who have signed the said memorandum, are the majority in value of the creditors *admitted** on the schedule of the said insolvent, who attended the said meeting]: and this deponent further saith, the name H. I. signed to the consent at the foot of the said memorandum to accept the trust mentioned therein, is of the proper hand-writing of the said H. I.

Sworn at C. aforesaid, this 2nd day of May, 1827, before me, } P. S.

Y. Z. a commissioner for taking affidavits in the Court of King's Bench at Westminster.

In the Court for Relief of Insolvent Debtors.

In the matter of the petition of E. F. a prisoner confined [or lately confined] for debt in the gaol of L.

Affidavit by assignee.

H. I., of C., in the county of D., merchant, maketh oath and saith, that he, this deponent, hath not been previously appointed an assignee of any other insolvent's estate and effects.

H. I.

Sworn at, &c., before me,

Y. Z., a master extraordinary in chancery.

* But see 25th section, p. 100, as to voting according to balance due, after allowing the value of available securities, &c.; and in case of disputes, the course to be pursued.

If the nominated assignee is already assignee of any other estate, the affidavit will be, that he was appointed assignee of the estate of T. V. in the month of December last, and hath filed his account in that matter with the proper officer of this honourable Court:— Should he not have filed his account and cannot do so, the special reason should be stated.

Assignees may be nominated "by a majority in value of the creditors whose debts shall be *admitted* on the schedule."

In the Court for Relief of Insolvent Debtors.

In the matter of the petition of E. F., a prisoner, &c. [as before]

Form of nomination by a majority, without meeting.

We, the undersigned, being a majority in value of the creditors of the said insolvent, whose debts are stated *admitted* on the schedule of the said insolvent, filed in this honourable Court, hereby nominate and appoint, subject to the approbation of this honourable Court, H. I., of C., in the county of D., merchant, a creditor of the said insolvent, assignee of the said insolvent's estate and effects. Dated this 2nd day of May, 1827.

I accept the said trust, and promise to execute a counterpart of the said assignment, if the Court shall so please,

H. I.

H. I.
K. L.
M. N.
O. P.

To the Court for Relief of Insolvent Debtors.

[A similar petition to the above in the case of appointment on a meeting of creditors by advertisement, p. 269.]

Affidavit of seeing nomination signed.

In the Court for Relief of Insolvent Debtors.

In the matter of the petition, &c.

P. S., of, &c., maketh oath and saith, that he was present and did see H. I., K. L., M. N., and O. P., creditors of the said insolvent, whose debts are stated *admitted* on the said schedule, sign the memorandum hereunto annexed, and that the name H. I., signed to the consent at the foot of the said memorandum, to accept the trust mentioned therein, is of the proper hand-writing of the said H. I. And this deponent further saith, that the total amount of the debts of creditors stated *admitted* on the schedule of the said insolvent filed in this honourable Court, appears to this deponent to amount to £800., and that the amount of the debts of the creditors who have signed the said memorandum as stated *admitted* on the said schedule, appears to this deponent to amount to £500., being a majority in value of the creditors of the said insolvent whose debts are admitted on the said schedule.

Sworn, &c. before me, P. S.

Y. Z. a master extraordinary in chancery.

Letter of attorney to vote in the choice of assignees.

In the Court for Relief of Insolvent Debtors.

In the matter of the petition of E. F., a prisoner, &c. [as before.]

Know all men by these presents, that I, O. P., of L., in the city of W., gentleman, a creditor of the said insolvent, to the amount of £100., *admitted* on his schedule filed in this honourable Court, have made, ordained, constituted and appointed, and by these presents do make, ordain, constitute and appoint, P. S., of C., in the county of D., gentleman, my true and lawful attorney for me and in my name, place and stead, to attend any meeting of the creditors of the

said insolvent, for the choice of an assignee or assignees of the said insolvent's estate and effects, and vote in the choice of one or more assignee or assignees, accordingly; and, in case I am nominated an assignee, for me and in my name, to sign the usual acceptance of the trust: and further, for me and in my name, and as my act and deed, to sign, seal, execute, do and perform all and whatsoever shall be requisite to be done in and about the premises. And I hereby ratify, confirm and allow, all and whatsoever my said attorney shall lawfully do or cause to be done for me, by virtue of these presents. In witness whereof, I have hereunto set my hand and seal this 25th day of April, 1827.

Signed, sealed, and delivered in the presence of O. P. (L. S.)

A. B. solicitor, L.

This is the letter of attorney referred to in the annexed affidavit of A. B. — Exhibit.

C. D. a commissioner.

In the Court for Relief of Insolvent Debtors.

In the matter, &c. [as before.] — Affidavit of due execution of letter of attorney.

A. B. of L., in the city of W., gentleman, maketh oath and saith, that he was present and did see O. P., of L. aforesaid, gentleman, duly sign, seal, and as his act and deed, deliver the letter of attorney hereunto annexed; and that the name A. B., subscribed as a witness to the execution thereof, is of the proper handwriting of this deponent.

A. B.

Sworn, &c., before me,
C. D. a commissioner for taking affidavits in the Court of King's Bench, at Westminster.

Where the assignee is appointed by the Court, commissioner, or justices, the provisional assignee, is to be satisfied thereof by production of the schedule, &c.; which he will direct to be brought to his office on giving him the number of the schedule and name of the insolvent and prison.

Taking money out of Court.

If there is any money in Court the assignee may apply to the provisional assignee for a certificate thereof, for which he pays 6*d*., and on such certificate the Court is moved to direct the amount to be paid to the assignee; should the assignee reside at a distance, he may empower another person to receive it, for which purpose, he will execute a power of attorney (*not on stamp.*) A rule is drawn up and the person authorised by the letter of attorney, takes the same, with the letter of attorney, to the provisional assignee.

In the Court for Relief of Insolvent Debtors.

In the matter of the petition of E. F., a prisoner, &c. [as before.]

Letter of attorney to receive money out of Court.

Know all men by these presents, that I, H. I., of C., in the county of D. merchant, assignee of the estate and effects of the said E. F., have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint, J. N. of C., in the county of S., gentleman, my true and lawful attorney, for me, and in my name, and as my act and deed, to ask for, demand, and receive, of and from Henry Dance, esquire, the provisional assignee of the estate and effects of insolvent debtors in England, the sum of £50. paid into Court in the above matter, and in my name, or in the name of the said J. N., to give and execute a sufficient receipt or re-

ceitps, or other discharge or discharges for the same, and what he the said J. N., shall lawfully do in the premises, I do hereby ratify, confirm and allow. In witness whereof I have hereunto set my hand and seal the 2nd day of May, in the year of our Lord,

Signed, sealed and delivered in the presence of } H. I. (L. S.)
P. S. solicitor, C.

The execution of the above power of attorney must be verified by an affidavit, similar to the affidavit, p. 273. The commissioner taking the affidavit must mark the power of attorney as an exhibit.

Execution of letter of attorney to be verified.

The assignee at the end of three months at the farthest, from the time of accepting conveyance, must file his account.

Account to be filed within three months.

If he neglects, the Court on the application *of a creditor*, will order him to file it, and in case the assignee has had a reasonable notice, that unless he files his account, an application will be made to the Court to compel him to file it, and that he should pay the costs of such application, and if it shall appear the assignee has been guilty of laches; the Court will commonly give the creditor costs against the assignee personally. Without any notice, it is the duty of the assignee to file his account, and if he neglects, he is in mercy, and may have to pay the costs of an application against him, see 36 sec. p. 109.

Should the assignee after an order to file his account, still neglect; the Court will not only remove him, but order an attachment to issue for contempt.

The account when filed may be inspected at the

office, and an office copy taken if thought necessary; and in case the insolvent, or any of his creditors or the Court, shall be dissatisfied with the account rendered; the Court will examine such account, and enquire into any waste, mismanagement, or neglect, and direct a proper administration of the estate. 36 sec. p. 109.

Assignee's account.

The assignee's account will be a debtor and creditor account*; on one side the monies received, from whom, and when received; on the other side, the monies paid, when, to whom, and for what: the account may be entitled;

Title of the account.

Account of H. I., assignee of the estate and effects of E. F., an insolvent debtor. Schedule, No. 16000, country case.

Account to be signed.

The account is to be signed at the foot thereof, by the assignee, and an affidavit in the following form annexed. The account must be marked as an exhibit by the commissioner taking the affidavit.

In the Court for Relief of Insolvent Debtors.

In the matter of the petition of E. F., a prisoner [as before].

Affidavit of assignee verifying account.

H. I., of, &c., merchant, assignee of the estate and effects of the said insolvent maketh oath and saith, that the account hereunto annexed, contains a fair and just account of the estate and effects of the said insolvent, got in by or for this deponent, as such assignee as aforesaid, and of all payments made in respect

* See mode of stating accounts, pp. 226, 227. If the assignee has employed an attorney, such attorney's bill of costs must be taxed, and the sum allowed only inserted in the account; the account will not be received until the costs are taxed by the proper officer at the office of the Court.

thereof; and that all payments in such account charged, were truly and *bonâ fide* made and paid.

Sworn, &c. H. I.

This affidavit does not require a stamp, see p. 220, before whom to be sworn.*

Account filed with the provisional assignee.

The account, with the affidavit annexed, is then filed with the provisional assignee.

If balance in hand, dividend to be made.

If there is any balance in hand wherewith a dividend may be made, the assignee must call a meeting of the creditors, by advertisement in the London Gazette, and in some daily paper, printed and published in London, or within the bills of mortality, if the insolvent, before he went to prison, resided in London, or within the bills of mortality; but if he resided elsewhere, then in the London Gazette, and a provincial paper generally circulated in or near where he resided before he was committed: The advertisements must appear, thirty *clear* days before the day appointed for the meeting.

Advertisement of making dividend.†

NOTICE is hereby given, that the assignee of the estate and effects of E. F., late of C., in the county of

* If the account is filed pursuant to the 1st G. 4. c. 119, see 7th section of that act as to whom *such* affidavit is to be sworn before.

† The 35th section, says "in such form as the said Court shall direct," there not being, at present, any general order of the Court on the subject, it will be proper, until a general rule is promulgated, to petition the Court to direct the form: the petition may be as follows:

To the Court for Relief of Insolvent Debtors.

In the matter of the petition, &c.

The humble petition of H. I., assignee of the said insolvent's estate and effects,

Sheweth,

That your petitioner hath filed his account and is ready to declare

D., maltster, an insolvent debtor, now in [or who was lately discharged from] His Majesty's gaol of L., in the county of L., under and by virtue of an act of parliament, made and passed in the seventh year of the reign of His present Majesty, entituled, "An act to amend and consolidate the laws for the relief of insolvent debtors in England," will, on the 1st day of June next, at three o'clock in the afternoon precisely, attend at the house of A., known by the sign of B., at C., in the county of D. aforesaid, to declare the amount of balance in hand and make a dividend out of the same, amongst the creditors of the said insolvent whose debts are admitted in the schedule sworn to by the said insolvent; and if the said insolvent or any of his creditors, intend to object to any debt or debts mentioned in the said schedule, such objections are at the said time and place, to be made.

The meeting of creditors to make a dividend.

Wait an hour, and if no objection is made by the insolvent, or by any creditor, to the debts stated admitted on the schedule*, and the assignee is satisfied thereon, and if the whole of the property belonging

the amount of balance in his hands, and make a dividend out of the same.

Your petitioner therefore humbly prays your honourable Court to direct that the form of notice hereunto annexed, may be the form of the notice of the time and place of making the dividend, or that your honourable Court will be pleased to direct such other form as may seem meet.

And your petitioner, &c.

H. I.

This petition, with the form of notice annexed, may be left at the town or country office of the Court, and in three or four days a rule thereon obtained.

* As to voting according to balance due on account fairly stated after allowing value of mortgaged property, &c. see 25th sec. p. 100.

to the insolvent has been got in, a final dividend may be made, among all such creditors whose debts *are admitted* on the schedule; the following memorandum may be adopted, as a record of the facts: The assignee will take care to bring into account, previous to striking his balance, all his expenses, together with the solicitor's bill for calling and attending this meeting, and making out the receipts for the dividend.

In the Court for Relief of Insolvent Debtors.

In the matter of the petition of, &c.

At, &c. [as in p. 282.]

Present H. I., K. L., &c.

Memorandum of making a dividend.

Memorandum. This being the day appointed in the London Gazette, and the Chester Courant newspaper, for H. I., the assignee of the said insolvent's estate to declare the amount of balance in his hands and to make a dividend out of the same, amongst the creditors of the said insolvent, whose debts are admitted in the schedule sworn to by the said insolvent; and the said H. I., having declared the amount of the balance in his hands wherewith a dividend may be made, to be £250., and it appearing, the amount of the debts due to the several creditors as admitted in the said schedule, and not objected to, amount to £1000., the said sum of £250. is sufficient to pay all such creditors a dividend of 5*s*. in the pound, on their respective debts; the said H. I., by desire of the several creditors, doth hereby make a dividend of 5*s*. in the pound, in proportion to the several and respective debts of the creditors of the said insolvent as admitted in his said schedule; which dividend is to be payable at the office of Mr. J. N., at C. aforesaid,

between the hours of ten and twelve daily, after Monday next.

Witness, H. I.
J. N. K. L., &c.

If, however, any creditor's debt is objected to, or any person whose demand is stated in the schedule, but not admitted to the extent of such demand, shall claim to be admitted for the whole thereof or for more than is so admitted, the following memorandum may be adopted:—

Memorandum of meeting to make dividend where a creditor's debt is objected to.

Form, the same as the last memorandum, to the words "*admitted* in the said schedule and not objected to,"—then to finish: amount to 900*l.*, and O. P., a creditor of the said insolvent, having objected to the debt of P. S., another creditor to the amount of 50*l.*, as admitted in the schedule, and there being a debt claimed by T. V., to the amount of 50*l.*, *disputed* in the said schedule; the said assignee, is hereby desired by the said creditors, to make due application to the said Court or to a Commissioner thereof for the due investigation of such objection and claim.

Or, should the creditors present, for any particular reason, think it inexpêdient to make a dividend, it will be advisable for the fact to be recorded in the shape of a memorandum or resolution, and signed by them.

Dividend *before* adjudication.*

In a case of dividend before adjudication, the same is to be made amongst the creditors who shall prove their debts to the satisfaction of the assignee to be sworn as directed, p. 220, and if any such debt tendered to be proved shall be objected in whole or in

* In no case dividend to be made before adjudication unless the Court shall so direct. 35 sec.

part, a similar memorandum to the above should be signed: and the Court or Commissioner forthwith applied to on the subject: see 35th sec. p. 107.

By the 73rd sec. 7 G. 4. p 149, assignees of a lunatic are to make a dividend, in a similar manner as above noticed, with regard to a dividend before adjudication.

Dividend in cases of lunacy.

If the insolvent is interested in, or entitled to, any real estate, either in possession, reversion, or expectancy, a meeting of the creditors must be convened, to approve the manner and place of sale by auction. The advertisement calling the meeting, must be inserted in the London Gazette, and in some daily paper, printed and published in London, or within the bills of mortality, if the insolvent, before he went to prison resided in London or within the bills of mortality, but if he resided elsewhere, then in the London Gazette, and a provincial paper, generally circulated in or near where he resided before he was committed. The meeting is to be thirty days before the sale. The advertisement must give fourteen days' notice of the meeting.

If real estate.

NOTICE is hereby given, that a meeting of the creditors of E. F., late of C., in the county of D., maltster, an insolvent debtor, who is now in [or was lately discharged from] His Majesty's gaol of L., in the county of L., under and by virtue of an act of parliament, made and passed in the seventh year of the reign of His present Majesty, entituled, "An act to amend and consolidate the Laws for the Relief of Insolvent Debtors in England," will be held on Wednesday, the 10th day of June next, at twelve o'clock at noon precisely, at the office of Mr. P. S. at, &c. to approve and direct in what manner, and at

Advertisement to approve sale of real estate.

what place or places, the real estate of the said insolvent, shall be sold by public auction.

In the Court for Relief of Insolvent Debtors.

In the matter of, &c.

Resolution on meeting of creditors to approve sale of real estate.

At a meeting of the creditors of the said insolvent, convened by advertisement in the London Gazette, and Liverpool Mercantile Advertiser, at the house of A., the sign of B., at C., in the county of D., on Wednesday, the 10th day of June, 1827, for the purpose of approving and directing in what manner, and at what place or places, the real estate of the said insolvent, shall be sold by public auction.

Present, H. I., K. L., M. N., and O. P., creditors of the said insolvent.

Resolved. That the real-estate of the said insolvent be sold by public auction, on the 20th day of July next, at D., in the county of L., between the hours of 11 o'clock in the forenoon, and 3 o'clock in the afternoon: That the sale be advertised in two newspapers published or circulating within the county of L., and publicity be given to the sale, by posting bills in and about the neighbourhood of D., aforesaid.

H. I.
Witness, K. L.
P. S. M. N.
O. P.

After 6 months from assignment,*

Time for sale to be enlarged on motion.

In case the sale cannot be effected within six months from the date of the sub-assignment, the resolutions should be signed in duplicate, as a motion must be made to enlarge the time for the sale of the real estate; such motion is made on the resolutions, and an

* If insolvent discharged under 1 G. 4. c. 119. only 2 months is allowed, from assignment, before motion necessary.

affidavit by the witness, of attending the meeting, and verifying the signatures, similar to the affidavit, so far as applicable, of attending the meeting for the choice of assignees.

An affidavit of seeing resolution signed, necessary.

The assignees should draw up the rule, and file the same, together with one of the signed resolutions, and Gazette and newspaper among the other memorandums, documents, and proceedings under the insolvency, as the purchaser's solicitor may require an inspection thereof.

The auction duty is not payable on the sale*: the conveyances are liable to the ad valorem and other duties as in ordinary cases.

Auction duty not payable.

By the words of the 20th sec. 7 G. 4. "In case such prisoner shall be entitled to any copyhold or customary estate, the conveyance and assignment by such provisional assignee to such assignee or assignees as aforesaid shall be entered on the court rolls of the manor," and thereupon the assignees may surrender or convey, &c. It is conceived the entry here directed to be made, is imperative on the lord, and that he would not be entitled to any fine thereon, and that the only fine would be on the admission of the purchaser. The entry is merely to enable the assignee to surrender. But see 1 *Atkyns*, p. 96.

Copyholds.

Assignee must not commence any suit in equity†, without the consent of the majority in value of the creditors, at a meeting to be convened on fourteen

Meeting of creditors to determine on suit in equity.

* 87 s. page 160. But if the discharge is under the 1 G. 4 c. 119. then the auction duty will attach.

† If the discharge is under the 1 G. 4 c. 119. they must not only not commence any suit in equity but not prosecute any suit at law, further than arrest on mesne process without a meeting: nevertheless if they do so proceed, yet the *defendant* cannot take advantage of such omission. 3 Bing. 203. 371.

clear days' notice in the London Gazette; or other newspaper most usually circulated in the neighbourhood of the last residence of the insolvent, and the approbation of the Court, or of one of the commissioners, 24 s. p. 100.

Advertisement

THE CREDITORS of E. F., late of C., in the county D., maltster, an insolvent debtor, who is now in [or was lately discharged from] His Majesty's gaol of L. in the county of L., under and by virtue of an act of parliament, made and passed in the seventh year of the reign of His present Majesty, entituled "An act to amend and consolidate the laws for the relief of insolvent debtors in England," are desired to meet the assignee of the said insolvent's estate, on Wednesday, the 10th day of June next, at 12 o'clock at noon precisely, at A's. the sign of B., in C. aforesaid, to assent to, or dissent from, the said assignee commencing a suit in equity against T. V., to compel the specific performance of an agreement for a lease made with the insolvent.

Resolutions to be signed.

Resolutions in form similar, so far as applicable, to the resolutions on meeting, to approve sale of real estate, p. 282, should be drawn and signed by the creditors, and an affidavit of attending the meeting, and seeing the creditors sign, and that the advertisements, (stating the newspapers,) were duly inserted fourteen days before the day of meeting, is to be annexed, and the Court moved thereon for its approval. The rule should be drawn up and filed, with the papers under the insolvency.

Court to be moved.

Meeting of creditors for submitting to arbitration.

If deemed advisable to compound any debts, or submit to arbitration any difference, the consent of the majority in value of the creditors, must be obtained at a meeting, to be convened the same as on a meeting for determining on suit in equity.

The same as last advertisement, to place of meeting:—to assent to, or dissent from, the said assignee making a composition with one Y. Z., a debtor to the said insolvent, to the amount of £100., and submitting to arbitration a difference or dispute between the said assignee and one Z. Y., relating to the estate and effects of the said insolvent.

Advertisement

Resolutions, as above mentioned, framed applicable to the case, are to be entered into on the meeting, and an affidavit of attending the meeting, and seeing the creditors sign; and that the advertisements (stating the newspapers), were duly inserted fourteen days before the day of meeting, is to be annexed, and the Court moved thereon for its approbation. The rule should be drawn up and filed with the other documents relating to the insolvency.

Resolutions to be signed.

Court to be moved.

Some individuals have adopted the plan of a general advertisement, for a meeting to assent to, or dissent from, the assignee's compounding any debts, or submitting to arbitration any difference, and to commencing any suit in equity: a determination come to by the creditors at such meeting would not be binding on absent creditors. (See the bankruptcy case, 1 *Atk.* 91.) If there is a special advertisement to consider the particular case or cases by name, but some creditors do not attend, it is their own fault, and those attending have a right to bind the whole. (1 *Atk.* 107.) It is questionable whether, if pointed out to the Court, that all the creditors had *not* given their sanction to general resolutions, the Court would approve them.

In some cases the assignees have added to the general resolutions on such meetings, an authority to appoint the insolvent, or any other person they shall think fit, to collect in the monies, &c., and generally

Insolvent not to collect debts.

to do any lawful act they shall think necessary or be advised, in and about the premises. How far any creditors signing such general authority would estop themselves from questioning the assignee's proceedings, or claiming a dividend when the money is purloined by such authorised collector, is not necessary to enquire; but it is clear, absent creditors would not be bound by any determination of the kind: it may be here proper to observe, that although in many bankruptcy cases, it may not be unadvisable to employ the bankrupt to collect in debts, yet under the insolvent law it is objectionable, and the Court has animadverted on assignees employing an insolvent to collect the debts due to his estate; his interest being in a considerable degree opposite to the interest of the creditors, where he continues in the same trade; as he may be disposed to leave the old debts uncollected, to favour his customers.

Assignees not to retain monies in hand.

By the 36th sec. 7 G. 4, p. 110. Where assignees shall wilfully retain monies in their hands, or *otherwise* employ *for their own benefit*, any monies, part of the estate of the insolvent, the Court or commissioner has power to charge the assignees with interest thereon, not exceeding £20. per centum per annum. Assignees will therefore be mindful and render their accounts at the end of the three months, and proceed to make a dividend, and wind up the matters of the estate as soon as possible: where there is any obstacle in the way of a dividend, the assignee will do well to place the monies in a banker's hands to his credit *as assignee of the estate of the insolvent*, that he may be enabled to satisfy the Court, he hath not wilfully retained or employed the monies for his own benefit, which he will not be able to do if it is mixed with his other monies at the banker's.

The assignee will, however, not forget, that he stands in the situation of a trustee, and if the banker fails, yet he may be responsible to the *cestui que trusts*, as the Court and creditors in their choice of him look to his substance, and not to others whom he may think fit to entrust.

Opinion of an actuary necessary, on claim by an annuity creditor.

In re *Gibson*, *Mr. Cook*, moved, to settle an annuity creditor's claim. The Court desired the assistance of an actuary. A stated case, with the actuary's opinion was produced, on which being read, the Court ordered a rule *nisi* on the assignee; but it appearing the applicant was the assignee, and the insolvent being abroad, and on looking at the schedule, no creditor of any amount appearing, the Court granted the rule absolute, adopting the amount settled by the actuary.

Costs of action allowed to day of discharge of insolvent.

In re *Squires*, *Mr. Pollock*, opposed rule to shew cause, why a creditor should not be entitled to a dividend, on the amount of the debt and costs recovered on the trial of the cause between such creditor and the insolvent: the insolvent had in her schedule, put "disputed" against the debt. It appeared the cause was at issue before the insolvent's discharge; but the record was made up, and trial had subsequent to the discharge.

The Court, allowed the creditor to receive dividend on the debt recovered, and costs of the action up to the day of the insolvent's discharge: he had unnecessarily incurred all the subsequent costs, as he might have proved his debt before the Court.

REMOVING ASSIGNEES and APPOINTING NEW ASSIGNEES.

In case assignee shall be unwilling to act, or in case of the death, incapacity, disability, misconduct or absence from the realm of the assignee, the Court by the 38th sec. 7 G. 4. on the application *of a creditor*, may remove such assignee, and appoint new assignee.

It has been the common practice, on an application to remove an assignee, to add, and why A. B. a creditor, should not be appointed in his stead; therefore, if the removed assignee does not choose to incur the expense of appearing to shew cause, the rule *nisi* is made absolute on affidavit of service, and the applicant becomes assignee, without the concurrence or knowledge of a single creditor, save the party removed. Thus an individual, who is obnoxious to the general body of creditors, and, perhaps, an unsafe man, may in this almost covert manner, become assignee; whereas, on a meeting of creditors, they would have, at least, an opportunity of selecting a person in whom the majority in value had confidence; and there seems no reason why the appointment of the new assignee should be attended with less caution or ceremony than the original appointment. In bankruptcy, a meeting of creditors is called by order of the Lord Chancellor for choice of new assignees. On an application to appoint a new assignee on the death of the former assignee, the motion is *ex parte*, and more forcibly shews the propriety of a meeting for choice, than even in cases of removal; as in the latter case, one creditor (the removed assignee) has, at least, notice of the motion to appoint the applicant.

There cannot be a better guide where the practice is not settled, than the established and approved practice in bankruptcy. For the purpose of fixing something like a practice in these respects, it is assumed, that where there are several creditors, and the applicant can be out-voted, the Court will direct a meeting for the choice of new assignees. Of course, if the applicant can, by reason of the amount of his debt, carry the choice, he may so shew on the affidavit, and a meeting for choice will not be necessary; nor will

it be necessary if he brings the approbation of a majority in value, properly verified by affidavits. Until the practice is fully settled, any person making application for removal of an assignee, will, of course, use his own discretion in framing the motion for such person to be appointed, or ask the direction of the Court to call a meeting for choice. It is here assumed, that in most cases, a meeting for choice will be the fit application; and on that assumption the following suggestions are ventured.

Assignee unwilling to act.

If an assignee shall express his unwillingness to act, and yet will not voluntarily appear and consent to be removed, an application should be made by a creditor to the Court for a rule to shew cause why he should not be removed, having declared himself unwilling to act; and that a meeting of the creditors be called to choose one or more assignee, or assignees, in the room of such removed assignee: this application must be made on an affidavit of the facts, and supported by an affidavit *by a creditor*.

Death of assignee.

It will be necessary to satisfy the Court of the decease of the assignee, previous to the appointment of a new assignee in his room. Proof of the death of the assignee may be either by affidavit, annexing an examined copy of the register of burial, or a certificate from the proper ecclesiastical court of probate of the will, or of administration having been granted, and an affidavit identifying the individual named in such document, as being the assignee of the insolvent.

This motion will be absolute in the first instance, to direct a meeting of the creditors to be called to choose one or more assignee or assignees, in the room of A. B. deceased.

Incapacity of assignee, or absence from the realm.

An assignee may be deemed incapable to act by reason of becoming a bankrupt; or insolvent; or a

lunatic; or quitting the kingdom to reside abroad; or a feme sole assignee, by marriage.

Misconduct of assignee.

An assignee may misconduct himself in various ways, so as to induce the Court to remove him; among the most common cases of misconduct may be classed the following: not using the best endeavours to get in the insolvent's estate, and making sale of the estate and effects; great laches in filing the account; not filing the account pursuant to a special order for the purpose; not making a dividend in due time after filing account, if the assignee has money in hand wherewith a dividend may be made; waste or mismanagement of the estate or effects; proceeding in suit in equity, or compounding debts, or entering into a reference*, without calling a meeting of the creditors, as directed by the act; and generally disobeying any order of the Court.

What affidavit should contain on motion to remove assignee for not filing account.

The application to remove an assignee, for not filing his account, should be grounded on affidavits shewing, (exclusive of the special matter, such as having got in property, and neglecting to file account after being desired in writing, to do so), the date of the sub-assignment, and search at the provisional assignee's office, for the account, and negative its being in the office; it must also state the day when the search was made; the Court having refused applications, where the day of making the search was not particularised in the affidavit; and also where the search had been made *more than two days* previous to the application for the rule to shew cause.

Application must be shewn to be by a creditor.

The application to remove an assignee, or to appoint a new assignee, in cases of unwillingness to act, or death, incapacity, or misconduct, must be shewn by

* An assignee entering into an arbitration-bond admits sufficient funds, and is responsible for costs. 2 Chit. 41.

the affidavit *of a creditor* to be the *bonâ fide* application of a creditor. The Court, on the 29th June, 1822, discharged a rule to shew cause why an assignee should not be removed for not filing his account as it did not appear by affidavit that *a creditor* made the application. The Court said, that under the 14th sec. 1 G. 4. c. 119, the application must be *by a creditor*, and the creditor's affidavit would be required:—In re *Barton*.

After the creditors have met and nominated a new assignee, the Court is to be moved to appoint such person so nominated, the assignee in the room of the assignee removed or dead. It does not seem necessary to call on the removed assignee, or representatives of the deceased assignee, to execute a release of their title to the unreceived and undisposed of estate and effects, or to assign over the same to the new assignee, as the 38th sec. 7 G. 4, enacts, "that from and immediately after such appointment of a new assignee or assignees, *and by virtue of the order* of the said Court in that behalf, all the estate, effects, rights, and powers of such prisoner, vested in any such former assignee or assignees shall become, and the same *are hereby vested** *in such new assignee or assignees* without any new assignment or conveyance executed in that behalf."

Removed assignee, and representatives of deceased assignee, to account for and deliver up property.

The Court, by the 38th sec. 7 G. 4, is empowered to compel any assignee who shall be removed, and the heirs, executors, or administrators, of any deceased assignee, to account for and deliver up all such estate and effects, books, papers, writings, deeds, and

* 1 Bing. 355. Goods sold by a preceding assignee whose appointment had been vacated: action brought by new assignee who declared that defendant was indebted to him, plaintiff, as assignee,—held no variance.

other evidences relating thereto, as shall remain in his hands, to be applied for the purposes of the act; and the 39th sec. enacts, That in case such assignee, and the heirs, &c. of the deceased assignee, shall not account for and deliver up such estate and effects, books, &c. or pay the balance found to be in his hands, the Court may order the person so offending to be arrested and committed to the King's Bench or to the county gaol, until he shall have fulfilled the duty required, or the Court shall make order to the contrary.

New assignee, to apply to removed assignee, to deliver up estate.

The new assignee on being duly appointed by the order of the Court should apply in writing to the removed assignee, or the executors, &c. of the deceased assignee, to account for and deliver up all the estate, &c., of the insolvent; and if he neglects to do so within a reasonable time, an application must be made to the Court for a rule to shew cause why the removed assignee, or the executors, &c., as the case may be, of the deceased assignee, should not, within a time to be limited, account for and deliver up to the new assignee, all the estate and effects, books, papers, writings, deeds, and other evidences relating thereto of the said insolvent's, remaining in the hands of the removed assignee:—where the application is against the representative of a deceased assignee, it will conclude;—remaining in the hands of the deceased assignee at the time of his death.

On neglect, to move the Court

Affidavit in support of motion—what it should contain.

This motion, as against a removed assignee, is made on an affidavit of the new assignee setting forth the time of insolvent's discharge; the appointment and removal, by order of the Court, of the removed assignee; the appointment of the new assignee; that certain monies or other property, according to the information or belief of the deponent has come to

the hands of the removed assignee; the demand made on the removed assignee, &c.; and the refusal or neglect to account and deliver up the property.

If the application is against the executors or administrators of a deceased assignee, it should be shewn, in addition to the above; the period of the death of the deceased assignee; that such persons are the executors or administrators, by an extract from the will or administration in the ecclesiastical Court where the will is proved, or administration granted; or a reference to the extract annexed to the affidavit supporting an application for meeting for choice of a new assignee in room of the deceased.

Schedule to be in Court.

On all applications for removal of assignees, or to direct an advertisement for a meeting for choice, the schedule should be in Court, in case it may be necessary to refer thereto: it will be taken into Court on leaving a request at the proper department in the office of the Court, the day preceding.

Rules to be personally served.

As the ulterior proceedings in the event of non-compliance with the order absolute of the Court, may affect the personal liberty of the individual, it will be advisable, if possible, to serve the demand, and also the rule *nisi* personally, on the removed assignee or executor, &c. of the deceased assignee.

The order absolute to account, &c. must be served personally, to bring the party into contempt, or if the service is wilfully avoided, application must be made to the Court on affidavit of the fact, that service of the order at his residence or last place of abode be deemed good service.

Motion to commit removed assignee.

If the removed assignee, or executors, &c. of the deceased assignee, do not comply with the order of the Court, an affidavit of that fact is to be made by the new assignee, and an affidavit of personal service,

of the order absolute to account: on these a motion for a rule to shew cause why an order should not issue, to arrest and commit the party to the county gaol. This rule *nisi* should be also personally served.

Better account may be moved for.

If the removed assignee or executors, &c. of the deceased assignee, shall render an account which is not satisfactory, or otherwise not deliver up any part of the estate, the Court should be moved on an affidavit of the facts, that a better account be delivered, or that the estate, &c. not delivered up, may be delivered up.

Solicitor's bill to be taxed.

If the removed assignee, or the executors, &c. of the deceased assignee should bring into account any costs, such costs should be taxed by the officer of the Court; and every assignee, before he discharges his attorney's bill, should cause the same to be taxed, or he may at a future time, have charges disallowed, and be unable to recover the same back.

PROCEEDINGS BEFORE JUSTICES IN SESSIONS.

THE petition, schedule, balance sheet, valuation, and copy of cause, with the affidavit of due service, according to the rule of Court, the order of Court, the warrant of attorney, and the provincial newspaper containing the advertisement of hearing, (the London Gazette not being necessary to produce,) having been, lodged with the clerk of the peace, the insolvent is, on the day of hearing, called and sworn.

The cryer then enquires, if any creditors of A. B. attend to oppose; the names of all the creditors in attendance are taken down by the clerk of the peace.

If a creditor, who has not been duly served, attends to oppose the insolvent, he thereby waives the irregularity in the service.

Three clear days' notice of opposition.

The creditor, to intitle himself to oppose the insolvent, must prove the notice to the insolvent, of his intention to oppose, which proof may be either *viva voce*, or by affidavit. See pp. 249, 250, one creditor having proved notice of opposition, any other creditor may oppose without such proof.

Mode of examination.

The creditor, either in person or by his attorney or counsel, proceeds in the examination of the insolvent; the insolvent, his attorney, or counsel, follows in questioning the insolvent, either on the examination by the opposing creditor, in order to explain any part

that seemed obscure, or any other part of his concerns that may seem necessary to inform the justices on: the opposing creditor, his attorney, or counsel, re-examines on any new matter arising out of the examination by the insolvent's attorney, or counsel, after which the opposing creditor calls his witnesses, each witness being cross-examined, *instanter* by the insolvent's attorney or counsel; the case for all the opposing creditors being closed, (the creditors may be examined as witnesses,) the insolvent's witnesses are examined, and cross-examined; the creditors, their attorney, or counsel, offer such remarks on the case as are deemed necessary, the insolvent's attorney or counsel replies thereto, which closes the case as far as regards the parties.

Insolvent not to be sworn to schedule, until, &c.

Should the insolvent be remanded* to a future day for examination, the schedule is not to be sworn to, or the warrant of attorney executed, until he passes his examination; when remanded for any defect in the notices, which renders a further order of the Court necessary, the schedule, and papers with a certificate of the cause of remand, is to be returned to the office of the Court.

Warrant of attorney to be executed, and schedule sworn to, previous to justices declaring their judgment.

Whether the insolvent is intended to be declared entitled to be discharged forthwith, or not until he shall have been in custody under one of the penal clauses, yet the justices should order the insolvent to execute the warrant of attorney, and make oath to the schedule *before they declare* their judgment, or even

* By the 43rd sec. p. 117, the justices are empowered to remand the Insolvent to some future general, or general quarter, or adjourned sessions, where they shall entertain any doubt touching any matter alleged against him, or touching the schedule or examination of the insolvent, or amendment of schedule shall appear necessary, or insolvent shall refuse to be sworn, or shall not answer satisfactorily.

intimate what it is likely to be, otherwise, when an insolvent is aware he is to undergo a protracted term of imprisonment, he may exercise his discretion as to signing the warrant of attorney, or swearing to the schedule.

Creditor should be permitted to oppose, if requested, even though insolvent must of necessity be remanded.

Whenever it is necessary to remand an insolvent, and any creditor appears to oppose, being entitled to do so, on proof of notice to the insolvent, and such creditor shall desire to proceed in the opposition to the insolvent *instanter*, it should be allowed, to save the expense of another attendance, and the substance of the examination should be minuted by the clerk of the peace, that the justices may on the subsequent day adjudge accordingly. But such creditor thus making his election is not to be allowed on the subsequent day to renew his examination, or produce fresh witnesses, except as touching the amendment, where such amendment affects him as a creditor, and any thing arising out of the insolvent's examination which the creditor could not possibly foresee, or have been prepared to rebut on the first examination.

Creditor not appearing on the first day, not to oppose on subsequent day.

Neither should any creditor who was duly served, and did not attend to oppose on the first day of hearing, be allowed to oppose on the subsequent day; and therefore it is important, on all occasions, to enquire by the cryer, the names of the creditors ready, by themselves, their counsel, or attorneys, as above-mentioned, to oppose, and to minute the same.

Reference to examiner.*

If any creditor requests the accounts and truth of the schedule to be referred to the examiner, and it shall appear expedient to the justices so to order, the justices adjourn the hearing of the petition of the prisoner.

* See 45 sec. p. 119. Application for the reference is to be supported by oath or affidavit.

Examiner to give an appointment.

The examiner being duly authorised by the justices' order, he will, on receiving £1. for his trouble on each meeting, give an appointment as follows:

In the Court for Relief of Insolvent Debtors.

In the matter of the petition of, &c.

I hereby appoint the day of at o'clock in the noon precisely, at, &c., to proceed on the accounts, and matters of the schedule referred to me. Dated, &c.

H. D. Examiner.

Copy to be served.

A copy of such appointment should be served on the insolvent; and if any particular documents are required to be produced by the insolvent, he may either have a formal notice to produce them, or the above warrant may be underwritten, "at which time the said insolvent is to produce a certain book of account," &c.

The examiner will issue his order to the gaoler, to bring the insolvent before him at the time appointed for the examination.

In the Court for Relief of Insolvent Debtors.

In the matter of the petition of E. F., a prisoner confined for debt in the gaol of R. in the county of D.

Form of examiner's order to gaoler.

Whereas, by an order of His Majesty's justices of the peace at a court of quarter sessions of the peace, for the county of D., holden at, &c., on, &c., by adjournment, I, H. D. esq., one of the examiners for the county of D., duly appointed by virtue of the act of parliament passed in the seventh year of the reign of His present Majesty to amend and consolidate the

laws for the relief of insolvent debtors in England, am ordered and directed to investigate the accounts and examine into the truth of the schedule of the said insolvent, and report thereon to the said justices at the adjourned sessions of the peace, to be holden at, &c., on, &c. Now, I, the said H. D., by virtue of the power to me given as such examiner by the said act of parliament, do hereby order and require you to bring the said prisoner before me, at the house of, &c. on the day of next, at the hour of o'clock, in the noon precisely. Dated this day of 1827.

H. D.

To the keeper of the said gaol of R.

The reference

In prosecuting the enquiry, witnesses may be examined by either party; the creditors commence by examining the insolvent, if they think fit, or his books, or the witnesses; the examination may go to the mode in which each debt due from the insolvent was contracted, so far as to discover whether the same are *bonâ fide* debts due, or whether they are tainted with usury or fraud; and as to any property the insolvent has at any time since the date of the first debt in his schedule had, and what has become thereof; also, when the debts due to the insolvent were contracted; to enable the creditors to see whether the balance sheet is fairly made out, and shews a true or false result, and deficiency. An examination may in some cases, as will be seen, extend to a great length.

In the Court for Relief of insolvent debtors.

In the matter of the petition, &c.

Examiner's report.

In pursuance of an order of reference to me directed by His Majesty's justices of the peace for the county

of D., at the adjourned sessions of the peace, on &c., I ordered the said insolvent's attendance before me, and I have been also attended by, &c., and the said insolvent, &c., were examined on oath, and the insolvent's books, namely, a day-book, &c. were produced and examined, and it appears to me, that, &c. all which I humbly certify to the said justices. Dated this day of 1827.

H. D.

Examiner for the county of D.

If creditor or insolvent dissatisfied with the report.

The report is read at the sessions, and if the creditor, or the insolvent, is dissatisfied therewith, the same is to be immediately objected to, and if the justices think the report inconclusive, or otherwise insufficient, the same is referred back to the examiner, and the particular points to be investigated may be stated.

If examiner requires further time.

If the examiner has not had sufficient time, or any circumstances have arisen which render an extension of time necessary, he should report the fact to the sessions, and another adjournment of the case takes place.

Insolvent holding any public situation.

Should the insolvent hold any public or other situation, where he has a fixed income or salary, not coming within the meaning of 29 s. 7 G. 4. p. 102, and there should be any thing in the insolvent's case, that may induce him rather to give up a part of his income to his creditors, than receive judgment; and the justices, and the creditors opposing, shall think the justice of the case will be satisfied by such a compromise; an undertaking, to the following effect, may be taken from the insolvent.

In the Court for Relief of Insolvent Debtors.

In the matter of the petition, &c.

Undertaking by the insolvent.

I, the abovenamed insolvent, hereby undertake to

pay out of my salary arising from, &c., the yearly sum of £ by four equal quarterly payments, on the 2nd day of January; the 2nd day of April; the 2nd day of July; and the 2nd day of October, in every year, to the assignee of my estate and effects, to be applied in payment of the debts mentioned in my schedule; the first payment to commence on the 2nd day of April next. And I hereby consent to a rule or order of this honourable Court, being drawn up on this undertaking. Dated this 2nd day of July, 1827.

Witness E. F.

T. C. Clerk of the Peace.

If the clerk of the peace witnesses the undertaking, and transmits the same with the schedule to the Court, no affidavit will be necessary, but if any other person witnesses the undertaking, an affidavit will be required of seeing the insolvent sign the undertaking, to ground the application for an order thereon. It will be prudent to take this undertaking in duplicate, in case one part should be lost; and here it may be well to observe that the clerk of the peace should never suffer a schedule, or other papers, on any pretence, to go out of his possession, except to the examiner, who of course will return them to the clerk of the peace; but in all cases transmit the same by coach, *direct to the officer* of the Court.

Schedule and papers in all cases to be returned to the officer of the Court.

In re *Swindells*, 13th *February*, 1822. The justices in sessions doubted the regularity of the Gazette notice; it was inserted, 25th December, for hearing on the 15th January, being one day inclusive, and the other exclusive, the Court on motion, said the act only required twenty-one day's notice, and not twenty-one *clear days*, therefore the notice was sufficient.

Regularity of notices.

On the 13th *April*, 1822, a motion was made to declare a service of notice sufficient, the supposed irregularity was not named, as the Court enquired if the insolvent had been heard, and being informed the hearing stood for the next adjourned sessions, the Court declined to interfere, observing they would not *first* judge of the sufficiency of a notice, it was the province of the justices in session to enquire into the regularity.

Amendment to be by altering the schedule, and not substituting a new one.

A schedule at sessions should be amended, by altering it, and, *if necessary*, annexing additional sheets of parchment, which alterations should be marked by the clerk of the peace, in the margin conspicuously, with the word " Amendment," and by no means substitute an entire new schedule, for that sent to sessions. If the amendments are such as absolutely to require new schedules, the insolvent should apply to the Court, for leave to file new schedules.

And *see Proceedings against insolvents.*

COSTS—POWER OF COURT.

BY 3rd sec. 7 G. 4., p. 81, it is provided that the said Court, or any commissioner thereof, *shall not have the power of awarding costs, except* in such cases only where such costs are thereinafter *expressly mentioned and permitted* to be awarded by that act.

What costs, &c. may be awarded by the Court.

Costs may be awarded on application to compel assignee to render account. 36 sec. p. 109.

And if opposition to insolvent frivolous and vexatious the Court may award costs. 53 sec. p. 125.

The Court may award costs on application to issue execution on judgment if application ill founded and vexatious. 57 sec. p. 129.

The Court, commissioner, or justices may order the fees and expenses of a reference paid by a creditor, to be repaid to him, out of the first money received by the provisional or other assignee. 45 sec. p. 120.

The Court, commissioner, or justices may adjudge the taxed costs of opposition in certain cases to be paid to the opposing creditor out of the estate, before dividend. 53 sec. p. 125.

In cases where a prisoner is removed from the gaols in London, Middlesex, or Surrey, to a country gaol, the expense incurred in such removal by the creditor to be repaid to him by the assignee out of the estate, before dividend. 65 sec. p. 137.

Certain costs may be ordered by a judge.

An insolvent arrested subsequent to his discharge may be ordered by the judge of the court from which the process issued, to be paid such costs as shall appear reasonable. 60 sec. p. 132.

Recovery of costs.

In all cases in which the said Court, or any commissioner thereof, or any justices, is or are *by that act authorized* to award costs against any person or persons, it shall and may be lawful for the said court to cause such costs to be recovered from such person or persons in the same manner as costs awarded by a rule of any of the superior courts at Westminster, may be recovered. 84 sec. p. 159.

Former practice of awarding costs.

Under the late act (1 G. 4.) it was the practice where the insolvent by reason of inaccuracies in his schedule, his order for hearing having been dismissed, or he otherwise found it necessary to crave an adjournment or a new order for hearing, for him to obtain the favor on condition of paying the opposing creditor the costs of the day to which the case stood adjourned; and in some instances the full costs of the opposition. In cases of applications for rules to shew cause, it was usual, where the Court had not the power of awarding costs, to require the applicants *to undertake* by the rules nisi, to pay costs on discharging the rules, if the Court should so order.

In re *Thomas*, 16th *November*, 1822. This insolvent had petitioned and obtained an order for hearing on the 4th of June last. Mr. *Cooke* then appeared for *Samuel Griffith*, a creditor, but the insolvent being out of custody, his petition was dismissed: the insolvent having been again arrested, and filed a new petition in due time.

Mr. *Cooke*, again appeared for *Griffith*, and contended, that before the insolvent could be heard on his

new petition he must pay the costs of the former opposition.

The Court. However hard this case bears on the creditor, costs cannot be ordered, the former petition having been dismissed, and the present quite a new proceeding: perhaps the better course, in such cases, may be to discharge the order for hearing, and leave the insolvent to apply to the Court to dismiss his petition when terms can be imposed.

In re *Pullen*, 1st *June*, 1824. The above point was again discussed, and the former decision adhered to.

Where the insolvent obtained leave to amend, &c. on condition of paying costs he proceeded to get such costs taxed, by serving the opposing creditor, or his known attorney, with an appointment to tax, and the costs were paid before insolvent allowed to proceed further in his case. Where a party had undertaken to pay costs on the discharge of his rule, and the same was discharged with costs, the party to whom the costs were to be paid taxed the same, first obtaining and serving an appointment to tax: he then demanded them personally, and if not paid, might move for a rule to shew cause why an attachment should not issue for non-payment;—whether such a rule was ever prosecuted, so far as to issue an attachment, I cannot learn.

SUMMONS.

The chief complaints on the subject of costs, need not now exist, as the 4th s. 7 G. 4, p. 82, empowers any one commissioner, to hear and determine *out of court*, upon summons to the proper parties, *all matters and things* relating to any person who shall have petitioned the Court, or to his estate, property, and effects, or the assignee or assignees thereof, *except* the hearing, re-hearing, or examination of the insol-

vent. The order of the commissioner to have the same effect as if made by the Court, unless rescinded by the Court at the next sitting.

Not only much expense to the suitors, but much of the time of the Commissioners would be saved on hearing cases out of court, on summons, instead of every trifling matter being made the subject of a motion. Two cases trifling in their nature, occur to me at the moment, and to the minutes respecting which I am able to refer:—one, in 1822, was a rule to shew cause (in re *Holt*) why all proceedings in the petition should not be stayed until the insolvent's attorneys' bill of costs was paid; the bill was referred for taxation, and allowed at £1. 6*s*. 2*d*., a motion was made to review the taxation; a reference afterwards made to the provisional assignee; and after several long arguments it was decided, that the attorney was only entitled to £1. 6*s*. 2*d*.: costs of the motion were not awarded to either side,—but the full costs, on both sides, were estimated to exceed £60. There is little doubt that the dispute, judging from similar matters before the judges of the superior courts, at chambers, respecting costs, would have been settled by one of the commissioners out of court, in five minutes, in the first instance, at no expense, and with more real justice, as the commissioner would on hearing the agents, have arrived at the truth, which it seemed to me the Court never got at, after all the arguments, as affidavits were introduced contradicting affidavits, misstatement followed misstatement, some wilful, others accidental, all which, together with the "usual mystification" thrown round the arguments, rendered the matter not simply complex, but unintelligible.

The other case I shall notice, was in the matter of *Sutton*, in 1825. The rule called on C., an attorney

of the Court*, in the country, to shew cause why he should not refund G. and G. two attorneys of the Court in town, the sum of fourteen shillings, and why C. should not pay the costs of the application; G. and G. undertaking to pay costs if the Court should so order. The rule was twice argued, and at length made absolute†, *without costs.* Two counsel held briefs in opposition to the rule. It has been doubted whether this Court could legally, or properly entertain such questions as above noticed, not being expressly authorized by the act, as in effect they amount to suits for the recovery of money. These doubts, although alluded to in the briefs, escaped, or were considered unworthy notice, and therefore, not presented to the Court.

In addition to the foregoing objections to motions of the above nature, another seems to arise under the present act, namely, the power of the Court to award costs *under any circumstances* whatever, save those *expressly mentioned and permitted* to be awarded by the act; even where the party undertakes to pay costs if the Court shall so order.

Costs to be taxed and allocatur delivered to prisoner.

By the 2nd rule of Court, p. 165, the attorney of every prisoner is required to cause his bill, where the same exceeds £6., to be taxed by the proper officer of the Court, and delivered with the allocatur thereon to the prisoner‡ one week at least before the hear-

* Although this gentleman happened to be an attorney of the Court, he was not the attorney of any suitor, and might have transacted the business, about which the *fourteen shillings* question arose, if he had not been such attorney.

† It is doubtful whether this rule could be enforced, although made absolute.

‡ Notwithstanding this taxation, it seems a signed bill must be delivered a month, pursuant to 2 Geo. 2, c. 23, s. 23, before action brought for the recovery. See Smith v. Wattleworth, 4 B. and C. 364.

ing; and in all cases where such bill of costs exceeds £6., the attorney is to produce on taxation thereof an affidavit proving the payment of all sums of money charged in the same as paid out of pocket, and the truth of each and every other charge for any proceeding, or attendance, or letter charged therein, and that the same were actually necessary to the prisoner's discharge, and also that the sum of   and no more, has been paid to the deponent on account of the said bill.*

It has been found exceedingly difficult in many country cases to comply with this rule, even as far as it can be complied with, to the full extent it cannot be obeyed, as a portion of the business is not complete at the time of taxation; in order to obey the substance of the rule, the following affidavit has been framed and approved. The printed bills furnished to my clients have the affidavit printed on the quarter sheet, which would otherwise be in blank, after the bills are folded up and endorsed.

In the Court for the relief of Insolvent Debtors.

In the matter of the petition of *Edward Fentham*, a prisoner confined for debt in the gaol of L.

Affidavit in support of bill of costs.

C. D., *of*, *&c.*, attorney for the said insolvent, maketh oath and saith that all the sums charged in the within bill of costs as paid out of pocket, down to and including the item, "attending searching if any detainers lodged, 3*s.* 4*d.*" have been, to the best of this deponent's belief, paid by or on behalf of this deponent, and that each and every other charge for any proceeding, or attendance, or letter charged therein,

* The old (expired) rule restricted the attorney from demanding, taking, or receiving, of any prisoner, payment of any bill of costs, exceeding £6., without having the same taxed.

down to, and including the said item, are true, and were actually necessary to the prisoner's discharge, to the best of this deponent's belief; and this deponent saith, he hath received the sum of *ten pounds*, and no more, on account of the said bill.

C. D.

Sworn at, &c., before me
X. X.
A commissioner of the Court of *King's Bench*, at Westminster.

On looking at the printed bill of costs, it will be observed that the item, "*attending searching if any detainers lodged 3s. 4d.*" includes every material charge in the bill on the insolvent, and in fact every one that can be incurred up to the period of the taxation.

The following scale of attorneys' and officers' fees will enable the practitioner to make out his bills. The bills for soliciting an insolvent's discharge may be had, printed, at Mr. Hodson's, 15, Cross Street, Hatton Garden, the printer to the Court.

List of Fees.

ATTORNEY'S FEES.

LIST OF FEES.

Attending in prison to take instructions for petition and assignment, and attending to bespeak copy of causes	0	6	8
Drawing and ingrossing petition and parchment	0	3	0
Duplicate petition in country cases......	0	1	0
Drawing and copying inventory of effects to be delivered to provisional assignee, according to length, at per folio..........	0	0	6

	£	s.	d.
Attending to file same and petition........	0	3	4
Preparing assignment to provisional assignee, attesting execution and filing same in country cases	0	5	0
Attending in prison and taking instructions for schedule, if not more than ten creditors	0	3	4
———————above ten creditors........	0	6	8
Drawing schedule .. per folio of 72 words	0	0	8
Copy for prisoner .. per folio	0	0	4
Engrossing same on parchment, to file (exclusive of parchment) per folio.......	0	0	4
Duplicate schedule, &c. in country cases, per folio..........................	0	0	4
Balance sheet .. .. common case..	0	5	0
Special, per sheet additional	0	2	6
Attending at prison, reading over and attesting signature to schedule, under ten creditors..........................	0	3	4
——————— above ten creditors.........	0	6	8
Attending to file schedule and for order of Court for hearing....................	0	3	4
Copies to serve and examining, including letters for service by the post, and attending at post office to put in the same, each	0	0	4
Attending messengers to deliver order, copies for service, and lists; and for their return	0	3	4
Duplicate list delivered to messengers, in each case	0	2	0
Ditto, where creditors more than twelve in number, and not exceeding eighteen, additional	0	0	6
Ditto, for every further similar increase ..	0	0	6
Drawing and ingrossing affidavits, per folio	0	0	8

Attending to swear and file affidavits, in each case	0	3	4
Searching for opposition	0	2	6
Attending Court on days of hearing	0	6	8
Attending the office for adjudication	0	2	6
Instructions for special affidavits	0	3	4
Instructions for common motions to the Court	0	2	6
Instructions on rules absolute	0	3	4
Copy and service of rules, in London and within two miles thereof	0	3	0
Instructions for brief special	0	6	8
The like in common cases	0	3	4
Drawing brief, &c. per sheet of ten folios	0	6	8
Fair copy per sheet of ten folios	0	3	4
Attending counsel, Court on motions, and all other common attendances	0	3	4
Writing letters when absolutely necessary	0	2	6
Drawing advertisements	0	2	6
Copies for printer (each)	0	1	0
Bill of costs and copy, from 1s. to	0	2	6
Attending taxing costs and affidavit in support	0	3	4

OFFICERS' FEES.

To the provisional assignee for attending at the prison to witness the signature to the petition, preparing provisional assignment, and bringing to and filing the same at the office	0	5	0
Warrant of attorney to authorise the entering up judgment	0	2	6
For preparing the assignment from the provisional assignee to the assignee	0	7	6

Certificate of money in the hands of the provisional assignee........................	0	0	6
To the officer of the Court for investigating prisoner's accounts, examining into the truth of the schedules, and reporting thereon to the Court, for every meeting..	1	0	0
Searches by any person not a prisoner or a creditor or the attorney of such prisoner or creditor..........................	0	1	0
Certificate of any proceeding of the Court required by a person not being a prisoner or the creditor of a prisoner, or the attorney of such prisoner or creditor.........	0	2	6
Office copies of proceedings, each folio.....	0	0	4
Taxing costs, each side	0	1	0
To the brokers for valuing and appraising the excepted articles of a prisoner, upon the amount of such valuation, in the pound	0	1	0
To the messengers for every service made by them where the postage of a letter would be twopence, examining copy and making return	0	0	9
Ditto for every other service made by them, examining copy and making return......	0	1	0
Ditto for drawing, ingrossing, and swearing affidavit of each service made by them	0	0	2
Copy of record of assignment to, or of counterpart of assignment by the provisional assignee, on parchment, certified according to the 7 Geo. 4, c. 57, sec. 119......	0	10	0

END.

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